

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

| | | |
|--------------------------|---|------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | Crim. No. 12-CR-27-JAW |
| |) | |
| CAROLE SWAN, and |) | |
| MARSHALL SWAN, |) | |
| |) | |
| Defendants |) | |

AFFIDAVIT OF JULIE HAUSMAN

NOW COMES Julie Hausman, who does depose and state under oath as follows:

1. I am employed by Safe Voices located at 484 Main St, Lewiston, ME 04240.
2. I have worked with survivors of domestic violence for over 14 years.
3. I met Carole Swan on Tuesday, June 4, 2013 at 223 Main Street, Auburn, Maine 04210.
4. During this meeting, Carole Swan described to me some of the abuse that she has suffered by her husband, Marshall Swan.
5. Based on what Carole told me, I am very concerned for her safety.
6. Carole described red flag behavioral patterns in her husband which are indicative of domestic violence battering.
7. My concerns for her safety are huge because of several things that, to me, raised the level of lethality of the situation. She described a number of extremely abusive situations which project that her husband may be anticipating something and that he is very dangerous.
8. Carole's demeanor, in my experience, is a very fearful women, and understandably so. She was very believable and it is completely understandable why she waited as long as she has before leaving.
9. We discussed a lengthy safety plan which included present and future safety. Due to the level of high lethality in this relationship, I have great concern if Mr. Swan will allow

Carole to separate herself from him. Due to the dire nature of her circumstances, I discussed with Carole a Protection from Abuse Order and the increased danger that this step could place her in. I also discussed with Carole that based upon our conversation and my experience, I believe that there is a great possibility that Mr. Swan may have put something within the home in anticipation of her attempting to leave him.

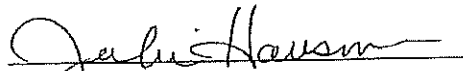
10. In situations such as Carole's, it is not unusual for women to wait years before leaving their abusive partners. We understand that victims of domestic violence are terrified that their partners will kill them if they attempt to leave or once they have left. Carole stated that, in fact, this was why she has not fled the home before now.
11. Carole and I discussed additional reasons why she has waited until now to leave her husband. Those reasons involved her children. Again, Carole's feelings, emotions, and reasoning were consistent with what I would expect to see from someone who has suffered the abuse Carole described.
12. Again, I believe that Carole is in significant danger. I have offered community supports that I believe may be of assistance to Carole. I have safety planned with Carole and I am prepared to support her through whatever steps that she chooses to take along this journey.

On my oath, and to the best of my knowledge, information, and belief, this affidavit is true and accurate.

STATE OF MAINE


County of Andros Coggin, ss.

Dated this 26th day of June, 2013, at Auburn, Maine.


Julie Hausman

Personally appeared Julie Hausman, who made oath to the foregoing affidavit, before me:

Dated: June 26, 2013


Notary Public, State of Maine
My Commission Expires: 09/05/15

Lisa D. Cates
My Commission Expires
September 5, 2015

EXHIBIT 4

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MAINE

3
4 UNITED STATES OF AMERICA)

) CRIMINAL ACTION

5 vs.)

) Docket No.

6
7 CAROLE SWAN)

) 1:12-cr-00027-JAW-1

8 Defendant.)

) SENTENCING

9
10
11 TRANSCRIPT OF PROCEEDINGS12 Pursuant to notice, the above-entitled matter came on
13 for SENTENCING before the HONORABLE JOHN A. WOODCOCK, JR.,
14 Chief District Judge, in the United States District Court,
15 Bangor, Maine, on the 13th day of June, 2014, at 1:15 p.m.
16

17 APPEARANCES:

18 For the Government:

Donald E. Clark, Esquire

19 For the Defendant:

Caleigh S. Milton, Esquire
Leonard I. Sharon, Esquire20
21
22 Recording Equipment Monitor
Julie Valentine23
24 Proceedings recorded by mechanical stenography; transcript
25 produced by computer.

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1 (Defendant present with counsel in open court.)

2 THE COURT: All right. We are here in the matter of
3 United States versus Carole Swan, which is 12-cr-27-JAW.
4 Would counsel please enter their appearances?

5 MR. CLARK: Don Clark for the government, Your
6 Honor.

7 MR. SHARON: Leonard Sharon for the defendant, Your
8 Honor.

9 THE COURT: Mr. Clark, have you provided reasonable,
10 accurate, and timely notice of this proceeding to any victims?

11 MR. CLARK: We have, Your Honor.

12 THE COURT: Thank you.

13 Ms. Swan, would you stand, ma'am? Ms. Swan, the
14 purpose of the hearing this afternoon is for me to sentence
15 you. Before I do that, I am going to hear from your lawyer.
16 I will hear from the prosecutor, and I will hear from you, if
17 you wish to speak to me. I'm going to start by asking you
18 some questions because I want to be sure you've read and
19 reviewed the presentence report as it has been revised, and I
20 also want to assure myself that you're competent.

21 Your name is Carole Swan; is that correct?

22 THE DEFENDANT: Yes.

23 THE COURT: I understand you graduated from the
24 Gardiner Area High School; is that right?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you used any alcohol or drugs in
2 the last 24 hours?

3 THE DEFENDANT: No.

4 THE COURT: Do you understand why it is you are here
5 today?

6 THE DEFENDANT: Yes.

7 THE COURT: Based on your responses and my direct
8 observations, I find you are competent.

9 You're here represented by your attorney,
10 Mr. Sharon, and Ms. Milton; is that correct?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you authorize your lawyers to act and
13 speak for you?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Sharon, has your client received a
16 copy of the written presentence report as revised?

17 MR. SHARON: Yes, Your Honor.

18 THE COURT: Have you had enough time to discuss the
19 contents of the report with her?

20 MR. SHARON: Yes, sir.

21 THE COURT: Ms. Swan, have you read the report in
22 its entirety?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Including its most recent revisions?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you had enough time to discuss the
2 contents with your attorney?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you know and understand everything
5 contained in the report?

6 THE DEFENDANT: I think there is a mistake in it.

7 THE COURT: Okay. Do you want to tell me what that
8 mistake is?

9 THE DEFENDANT: I believe in the financial part,
10 sir.

11 THE COURT: All right. Let's -- I'm going to ask
12 that you take a look at the report and what I'm going to do is
13 go through it section-by-section because I -- I am not going
14 to ask you, for example, because you were convicted, you
15 didn't plead guilty to these crimes, I am not going to ask you
16 about the offense conduct. That's not fair to you because you
17 have a continuing right to remain silent, and I am not going
18 to press you on that.

19 So I'm going to go through the report item-by-item
20 to make sure it's correct and then when we get to the
21 financial issue, you can tell me where you think there is an
22 error.

23 Turning to page 3 of the report, which has
24 identifying data, is that all that correct?

25 THE DEFENDANT: My address has changed, sir.

1 THE COURT: Okay. You are now where?

2 THE DEFENDANT: 472 Windsor Road, Chelsea.

3 THE COURT: Yeah, I've got -- that's what -- oh, it
4 says 472 Windsor Road, Augusta, and it's actually Chelsea?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. Is there anything else about
7 page 3?

8 THE DEFENDANT: No, sir.

9 THE COURT: Now, on page 4, there is a part A, which
10 talks about the offense, and that basically talks about when
11 you were -- when you first appeared on State related charges,
12 and then it goes through the history of the case. Have you
13 looked at paragraphs 1 through 5?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And is that all accurate?

16 MR. SHARON: She points to the fact regarding -- in
17 paragraph 5 regarding the construction where it was originally
18 said it appears that the defendant and husband were involved
19 in that. That was later, I believe, dealt with in the
20 pretrial -- in the conference -- sentencing conference, Your
21 Honor.

22 THE COURT: Right. We might as well address that
23 now so that I can alleviate any concerns that either counsel
24 or you may have regarding the issue with Frank Monroe.
25 You were here during the course of your husband's sentencing,

1 and you heard all that testimony and my findings that he did,
2 in fact, pay an individual to slash Frank Monroe's tires and
3 to damage his equipment. However, I listened carefully to
4 that testimony, and unless the government is prepared to
5 present other evidence -- is the government prepared to
6 present other evidence on that issue regarding this defendant?

7 MR. CLARK: No.

8 THE COURT: My conclusion about that was that you
9 were not directly involved. There was some evidence that you
10 were present during at least a portion of one of the meetings,
11 but even that witness said that they weren't sure what you
12 heard and what you didn't hear. And, therefore, it was my
13 conclusion and it is my conclusion that I am not holding you
14 as responsible for what your husband did regarding Frank
15 Monroe and the slash -- and paying someone to slash his tires
16 in an attempt to intimidate him. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, turning to the offense conduct,
19 that's what I am not going to ask you about.

20 THE DEFENDANT: Okay.

21 THE COURT: And so we'll skip right through, and I
22 am not going to ask you about the obstruction of justice or
23 your acceptance of responsibility, any of that, or the --
24 obviously, the guideline calculations are something that you
25 don't have any information about anyway.

1 I'm going to turn instead to page 16 and 17, which
2 reflects your criminal history, and that indicates basically
3 you do not have a criminal history; is that correct?

4 THE DEFENDANT: Correct, sir.

5 THE COURT: Now, the next part of this is what we
6 call offender characteristics, and this talks about where you
7 were brought up and your father and mother, your stepfather,
8 your -- and all sorts of other issues. Have you had a chance
9 to review that carefully?

10 THE DEFENDANT: Yes, I have.

11 THE COURT: And you are going to tell me that there
12 is a mistake on a financial part of this?

13 THE DEFENDANT: Yes..

14 THE COURT: What are you referring to, ma'am?

15 THE DEFENDANT: Under the assets.

16 THE COURT: Yes, ma'am.

17 THE DEFENDANT: The vehicle is a 2013.

18 THE COURT: Okay. So it says a 2006, one-ton truck,
19 is that what you're referring to or are you referring to the
20 --

21 THE DEFENDANT: No, at the top, the first one, sir.

22 THE COURT: Okay. The 2011?

23 THE DEFENDANT: That's wrong.

24 THE COURT: Okay. And what is the date?

25 THE DEFENDANT: It's a 2013.

1 THE COURT: Okay.

2 THE DEFENDANT: And the balance is around 26,000.

3 THE COURT: Okay. Thank you.

4 THE DEFENDANT: And also there's credit card debt
5 around 56,000.

6 THE COURT: Okay. 56,000 instead of 1,000?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay.

9 THE DEFENDANT: And also there has been some
10 confusion because my husband had listed a piece of property on
11 his that I hadn't listed on mine, and there is a pit in
12 Windsor that is now in my son's name, and I am not sure of the
13 evaluation. I am not qualified. All I have is the tax
14 evaluation.

15 THE COURT: Okay. Well, we will talk about that --

16 THE DEFENDANT: Okay.

17 THE COURT: -- later on during it. I'm aware of
18 that issue. I think Mr. Clark brought that pit issue to my
19 attention just recently; is that right, Mr. Clark?

20 MR. CLARK: That's correct, Your Honor.

21 THE COURT: Okay.

22 THE DEFENDANT: Also, there was a piece of property
23 that I sold in the town of Chelsea, and I thought it got added
24 on here, but it didn't. It was sold for \$9,000 and I got a
25 check for 7,600 after I paid the realtor.

1 THE COURT: Okay.

2 MR. CLARK: I think that's in paragraph 88A.

3 THE COURT: Right. If you look at paragraph --
4 thank you, Mr. Clark.

5 Paragraph 88A, I think that talks about these two
6 issues.

7 MR. SHARON: Yes, Your Honor.

8 THE DEFENDANT: Yes, it does.

9 THE COURT: Okay. Is that what you were referring
10 to?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Is there anything else?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. Thank you. You may be
15 seated.

16 Now, I want to be sure that I understand -- counsel
17 have been very helpful. You have filed memoranda, which I
18 have carefully reviewed, but I want to be sure that I
19 understand what it is, if anything, that is still being
20 contested. And before we get to that, I want to confirm what
21 I said at the time of the presentence conference. I believe
22 that the government is correct that I have the authority under
23 the United States Sentencing Guidelines to consider conduct
24 that -- even though she was acquitted of that conduct. I, as
25 a matter of policy, have never done so, and I don't intend to

1 do so here. The standard is different. The standard here is
2 more likely than not. But it seems to me that if you have
3 gone to trial and a jury has heard a case and the government
4 hasn't proven that case before a jury, that the court should
5 not consider that evidence or hold that evidence against a
6 defendant at the time of sentencing. Now, where that comes
7 into play is in two areas, one is the Windsor Road culvert
8 issue so-called, and the second is the two acquitted counts on
9 the Federal Workers' Compensation fraud. Those are both
10 referred to in the presentence report, and although I am aware
11 of all the testimony regarding both, I am not going to hold
12 the evidence underlying those acquitted counts against the
13 defendant, and, therefore, I will not, for example, order
14 restitution to the office of Workers' Compensation Programs
15 for the amounts that are related directly to the acquitted
16 counts for the Workers' Compensation Program, and I am not
17 going to consider the Windsor Road culvert issue for purposes
18 of resolving or attempting to resolve the obstruction of
19 justice charges.

20 Now with that, I understand there is still a
21 substantial disagreement regarding obstruction of justice, and
22 I would be -- is there -- does it -- do -- well, first, let me
23 ask, are there other issues, other than obstruction of justice
24 that counsel believe that the court needs to resolve?

25 MR. CLARK: Only the question of whether Ms. Swan

1 owns the pit and its value.

2 THE COURT: Okay.

3 MR. SHARON: That's correct.

4 THE COURT: All right. And turning to the
5 obstruction of justice issue, how do counsel wish to proceed?

6 Mr. Clark, the burden is on you on that issue?

7 MR. CLARK: Your Honor, we have filed extensive
8 briefs on that issues, and we believe the court has the
9 information to make that finding. We don't intend to argue it
10 any further.

11 THE COURT: All right.

12 MR. SHARON: I agree with Mr. Clark.

13 THE COURT: All right. Thank you. Again, I would
14 like to thank counsel. The memoranda were very helpful and
15 allowed me to focus my energies on this complicated case.
16 What is at issue here is whether the defendant, Carole Swan,
17 should receive a two-level enhancement for obstructing
18 justice. There is a provision under Section 3C1.1 of the
19 United States Sentencing Commission Guidelines that address
20 obstruction of justice. That provision reads, if, (1), the
21 defendant willfully obstructed or impeded or attempted to
22 obstruct or impede the administration of justice with respect
23 to the investigation, prosecution, or sentencing of the
24 instant offense of conviction, and, (2) the obstructive
25 conduct related to (A) defendant's -- the defendant's offense

1 of conviction and any relevant conduct, or (B) a closely
2 related offense, increase by two levels.

3 The guideline commentary contains a number of
4 important principles. The first is that a denial of guilt
5 does not necessarily constitute obstruction of justice.
6 People tend to remember the same event differently, and there
7 is a difference between perjury and testimony that is
8 generated from confusion, mistake, or faulty memory.

9 Here, the defendant correctly cites United States vs.
10 Dunnigan, at 507 U.S. 87, 117-118, a 1993 Supreme Court case,
11 which was followed by United States vs. Tracy, which is 989
12 F.2d 1279 at 1288-89, a 1993 First Circuit case, as
13 essentially infusing the criminal elements of perjury into
14 those false statements that qualify for obstruction of justice
15 under Section 3C1.1. Therefore, in order to conclude that a
16 defendant has obstructed justice by falsely testifying, the
17 witness's testimony must first and the court must find that --
18 that the testimony was first false; second, that the false
19 testimony must be about a material matter; and third, that the
20 defendant must have had the willful intent to provide false
21 testimony, and the testimony must not be the result of
22 confusion, mistake, or faulty memory.

23 Further, the First Circuit has instructed the sentencing
24 court that it must be an independent finding on each element
25 of perjury in a separate, clear finding. And that a

1 sentencing court should not apply the obstruction of justice
2 enhancement based on perjury, unless it has a firm conviction
3 that the defendant committed perjury.

4 At the outset, I will say that the application of this
5 particular two-level enhancement for obstruction seems
6 unusually clear in this case. In the court's view, the
7 defendant lied repeatedly throughout the course of her
8 dealings with the judicial process, and the court is, frankly,
9 reluctant to go on and isolate out each of these lies, hold
10 them up, examine them under Dunnigan and recite the elements
11 because I, frankly, do not want to embarrass the defendant any
12 more than her situation calls for, but the defendant herself
13 has demanded that I do so, as is her right. And, therefore, I
14 will set about the task.

15 MR. SHARON: Judge, may I address you for one
16 second, please?

17 THE COURT: Sure.

18 MR. SHARON: I believe -- Ms. Milton, who wrote the
19 brief note -- thank you for the compliment -- she did spend a
20 lot of time on it -- cited law in there that said if the court
21 believes that the obstruction and that permeates the
22 proceeding, that there is really no need to isolate it. Based
23 upon that finding, we would accept that finding of yours and
24 abide by your recommendation that it's not necessary at this
25 point. We would waive that argument and feel that your

1 statement that it does permeate the record and your opinion of
2 that is sufficient to make a finding of fact necessary, if
3 there is any appeal. We don't believe it's necessary based
4 upon that finding and the case law for you to go through that
5 and, as you said, embarrass her any more than necessary. So
6 we would waive that argument.

7 THE COURT: All right. So the defendant is not
8 requesting that I do what Dunnigan asks me to do and isolate
9 each of these statements, which I have concluded are false --

10 MR. SHARON: No, Your Honor.

11 THE COURT: -- and reveal the basis for that?

12 MR. SHARON: No, Your Honor, we don't believe it's
13 necessary. We believe your finding of fact is sufficient
14 under the law we cited under the First Circuit Court.

15 THE COURT: Okay. Fine.

16 MR. SHARON: Thank you, Your Honor.

17 THE COURT: Thank you.

18 Mr. Clark, do you have a position on that?

19 MR. CLARK: Well, Your Honor, I am reluctant not to
20 have the court go through each and every one of the lies that
21 the defendant offered during the course of this proceeding,
22 but if the defendant is waiving that, I guess we can live with
23 it.

24 THE COURT: Right. The only thing I would add that
25 it -- because I think it is important to respond to one of the

1 arguments that has been made, and that is a question of how
2 the court should apply obstruction of justice. And in the
3 defendant's memorandum of March 12, 2014, she argued that the
4 obstruction of justice enhancement should not be applied to
5 each group and what happened in the probation office guideline
6 calculations is that the probation office treated the three
7 separate categories of crimes, Hobbs Act, tax fraud, and
8 workers' compensation as requiring separate calculations. And
9 then under what is a somewhat mysterious and complicated
10 formula that is contained in the guidelines, these three
11 groups are added together and an incremental guideline figure
12 is attached to the combination of these groups.

13 As I had understood it, the defendant has no quarrel with
14 the grouping analysis itself or the fact that the Hobbs Act,
15 tax fraud, and workers' compensation counts were treated as
16 separate groups. However, she says that the obstruction of
17 justice enhancement should be applied to only one -- only once
18 to one group, for example, the Hobbs Act group and not to the
19 others, but I think the conclusion that I have come to in the
20 defendant's waiver of any argument on it undercuts that
21 argument because I have found in effect that her obstruction
22 of justice enhancement would apply to all three groups and,
23 therefore, should be applied under Section 1B1.1(a)(3) and
24 (4). Is there any argument on that issue?

25 MS. MILTON: No, Your Honor.

1 THE COURT: Okay. The only other -- there are only
2 two other issues, I believe, that were before the court, and
3 you can correct me if I'm wrong, one was a request for
4 reimbursement for expenses that Frank Monroe sustained as a
5 consequence of being a witness in the case and victim.

6 MR. CLARK: That's correct, Your Honor. The victim
7 in the case, Frank Monroe, submitted an updated or amended
8 victim impact statement. As a victim in this case, we believe
9 that he is entitled to reimbursement, and we have put that
10 before the court.

11 THE COURT: Right. And what's the defendant's
12 position on that?

13 MR. SHARON: I believe that's your discretion, Your
14 Honor.

15 THE COURT: Okay. Let me be sure we're all on the
16 same page as to what he is requesting. There are really two
17 separate issues here. One is that he has requested
18 reimbursement for the \$10,000 that he turned over to -- that
19 the jury concluded he turned over by extortion to the
20 defendant. And I take it that that's not the issue here,
21 there is no issue on that?

22 MR. SHARON: No, Your Honor.

23 THE COURT: The request for reimbursement totals
24 \$770.90 for mileage and lost income. And is that the figure
25 that you understand is applicable here, Mr. Clark?

1 MR. CLARK: No, Judge, that's -- those are the funds
2 that were actually paid or disbursed by the U.S. Marshals
3 Service.

4 THE COURT: Okay.

5 MR. CLARK: What he's asking for is contained in his
6 affidavit. He totals it up to be a total of \$26,492.56,
7 including the \$10,000. He seeks an additional reimbursement
8 of \$16,492.56, but also recognizes that the court has to back
9 out the \$770.90 that the U.S. Marshals paid him. So I believe
10 the net number that he's seeking inclusive of the \$10,000 is
11 \$25,721.66.

12 THE COURT: Well, what's the -- what's the
13 government's view? Is that an appropriate amount from the
14 government's perspective?

15 MR. CLARK: Well, Judge, under the mandatory Victims
16 Restitution Act, the victim is entitled to restitution for
17 lost income, transportation, and other expenses incurred
18 during participation in the investigation or prosecution of
19 the offense or attendance at proceedings related to the
20 offense. That's Title 18 United States Code Section 3663
21 A(b)(4).

22 Judge, obviously in the situation where a victim has
23 asked to be reimbursed under the statutory provision, we
24 have -- we have confirmed that the -- what he has represented
25 in terms of the amount of time or the number of meetings that

1 he recalls taking place did occur. Obviously, we will leave
2 to the court the issue of how to value that. I believe he has
3 claimed what he believes to be the fair value of the work that
4 he missed during the times that he had to meet to discuss the
5 case or to attend trial.

6 THE COURT: Okay.

7 MR. CLARK: I note, by the way, Judge, that he's not
8 asking for reimbursement for the -- I believe in access of
9 approximately \$16,000 in damage that was done to his vehicle.

10 THE COURT: Right. Well, she -- I have found that
11 she wasn't involved in that anyway, so I wouldn't order that
12 at least against him. I may have ordered it against her
13 husband, but it wasn't requested at that time, I don't think.

14 MR. CLARK: Yeah, it couldn't be, Judge, because he
15 was convicted of offenses for which restitution was not
16 authorized.

17 THE COURT: Okay. Fair enough.

18 What's the -- I would like to hear from the defendant as
19 to what her position is regarding that claim for restitution.
20 There is a statutory provision, 18 U.S.C. Section 366 A (sic)
21 that seems to require it. Is -- what's -- what's your view of
22 that?

23 MR. SHARON: I think that the government represents
24 that he -- Mr. Monroe accurately represented the amount of
25 meetings he attended. Obviously, I have no objection to the

1 cost of him attending that. I'm somewhat reluctant on his
2 estimate of work he lost and I am having a difficult time. I
3 realize at sentencing the evidentiary burden is less than what
4 is reasonable and that the hearsay rules don't apply. I'm
5 just having a difficult time taking a position because I
6 really don't know what that's based on --

7 THE COURT: Sure.

8 MR. SHARON: But I accept the government's
9 proposition that he accurately reflects the time spent in
10 meetings and would ask the court to apply its discretion based
11 on the facts contained in the affidavit.

12 THE COURT: Yeah, I don't -- the only thing I have
13 is an affidavit that was signed by him, and I don't have any
14 countervailing evidence. That simply sets forth was that he
15 lost \$10,000 from extortion, and then he's got a series of
16 trips to Portland where he is charging \$150 an hour. That on
17 its face doesn't seem unreasonable. I think I'm basically --
18 he signed this under oath. And unless there is something that
19 you can point me to that would lead me to conclude that it's
20 not accurate, I think I am pretty well -- have to accept the
21 statement here. There is nothing that -- as I say, there is
22 nothing that jumps out at me as I look at it that says he
23 couldn't have earned \$150 an hour in his business and that the
24 trips aren't needed -- he didn't take the trips that he said
25 he took.

1 Do you have anything further?

2 MR. CLARK: No, Your Honor.

3 THE COURT: So the -- would you tell me again what
4 the bottom line figure is for -- is it the 16,492.56 that is
5 the victim expenses?

6 MR. CLARK: Yes, yes. That would be the victim
7 expenses less the amount reduced by the Marshals Service,
8 which was \$770.90, leaving, with respect to the expenses, a
9 net of \$15,721.66.

10 THE COURT: All right.

11 MR. CLARK: And then the 10,000 of the funds
12 extorted would be added to that.

13 THE COURT: I will make a finding that under 18
14 U.S.C. Section 366 A (sic) the defendant -- the -- Frank
15 Monroe is entitled to receive reimbursement from the defendant
16 in the total amount of \$15,721.66. And in addition, based on
17 the evidence at trial, the evidence of which the -- formed the
18 basis of the jury's verdict of extortion, that the defendant
19 extorted \$10,000 from Mr. Monroe, and, therefore, that is
20 appropriately added to an order of restitution. Therefore,
21 the total order of restitution to Mr. Monroe will equal
22 \$25,721.66.

23 Now, the final issue, as I understand it, is the
24 question of this late-breaking information about the property.

25 MR. CLARK: Yes, Judge.

1 THE COURT: And what does the government wish me to
2 do with that?

3 MR. CLARK: Judge, the government has three short
4 witnesses that would prove it at a hearing.

5 THE COURT: All right. You may proceed.

6 MR. CLARK: Thank you, Your Honor. The government
7 calls Special Agent Rodney Giguere.

8 THE CLERK: Do you solemnly swear the testimony you
9 shall give in the matter now in hearing shall be the truth,
10 the whole truth, and nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Thank you. Please be seated. Could you
13 please state your name for the record and spell both your
14 first and last names?

15 THE WITNESS: Rodney Giguere, R-o-d-n-e-y
16 G-i-g-u-e-r-e.

17 RODNEY GIGUERE, having been duly sworn, was examined and
18 testified as follow:

19 DIRECT EXAMINATION

20 BY MR. CLARK:

21 Q Mr. Giguere, how are you employed?

22 A I'm a special agent with the Internal Revenue Service,
23 Criminal Investigation Division.

24 Q How long have you been so employed?

25 A Approximately, 23 years.

1 Q What do you do for the IRS?

2 A Investigate criminal violations within the internal
3 revenue code.

4 Q Describe your education.

5 A I have bachelor's degree in accounting.

6 Q How many tax fraud investigations have you been involved
7 in?

8 A Hundreds.

9 Q During the course of those investigations -- I'm sorry,
10 withdrawn.

11 Did there come a time when you became involved in a tax
12 fraud case involving Carole Swan?

13 A Yes.

14 Q What was your role in this case?

15 A I investigated the tax fraud allegations.

16 Q And as part of your investigative efforts in this
17 case -- I'm sorry. As part of your investigation efforts,
18 have you had occasion in this or other cases to trace real
19 estate transactions to determine ownership of real property?

20 A Yes.

21 Q Can you briefly describe how you do that?

22 A Determine it through public records. Most deed
23 transfers are filed with the registry of deeds, and then
24 ownership records, tax records, and other property cards and
25 things like that are usually on file with the town halls.

1 Q Did there come a time when you reviewed certain deeds
2 and town records for a gravel pit located at 20 Rod Road in
3 Windsor, Maine, that was owned in whole or in part by Carole
4 Swan?

5 A Yes.

6 MR. CLARK: Your Honor, may I approach?

7 THE COURT: You may.

8 BY MR. CLARK:

9 Q I'm going to place before you what I've marked as
10 Exhibits 319, 320, 321, 324, and 325. Have you had an
11 opportunity to review these documents before testifying here
12 today?

13 A Yes, I have.

14 Q What is Government Exhibit 319?

15 A This is the property card maintained with the town of
16 Chelsea for a location known as 20 Rod Road, and this is the
17 property card for the gravel pit.

18 Q And according to the tax card --

19 MR. CLARK: I'd offer Government Exhibit 319.

20 THE COURT: Any objection?

21 MR. SHARON: No, Your Honor.

22 THE COURT: It's admitted.

23 BY MR. CLARK:

24 Q According to Government Exhibit 319, who currently owns
25 the gravel pit?

1 A It's currently listed as being owned by Jacob Swan.

2 Q And who owned it prior to Jacob Swan?

3 A Carole Swan.

4 Q And directing your attention to Government Exhibit 320,
5 do you recognize it?

6 A Yes.

7 Q What is it?

8 A This is the -- the map, lot map from the town of
9 Chelsea, depicting the particular location within the town for
10 the gravel pit.

11 Q And is the gravel pit highlighted on the tax map?

12 A It is.

13 MR. CLARK: I'd offer Government Exhibit 320.

14 THE COURT: Any objection?

15 MR. SHARON: No, sir.

16 THE COURT: It's admitted.

17 BY MR. CLARK:

18 Q What's Government Exhibit 321?

19 A This an aerial satellite photograph taken off of Google
20 Maps of that same location of the gravel pit.

21 MR. CLARK: I'd offer Government Exhibit 321.

22 THE COURT: Any objection?

23 MR. SHARON: No, Your Honor.

24 THE COURT: It's admitted.

25 BY MR. CLARK:

1 Q Who owned this gravel pit prior to 1997?

2 A Prior to 1997, it was jointly-owned property.

3 Q Well, let me ask you this, I would like to direct your
4 attention to Government Exhibits 324 and 325.

5 A Okay.

6 Q What is that?

7 A 324 is a -- is a summary of the content of the deed
8 information that I -- that I examined.

9 Q And 325?

10 A 325 is a pictorial flow chart of that same information.

11 MR. CLARK: I'd offer government Exhibits 324 and
12 325.

13 THE COURT: Any objection?

14 MR. SHARON: No, Your Honor.

15 THE COURT: Each is admitted.

16 BY MR. CLARK:

17 Q So now back in 1997, prior to any conveyance, who was
18 the person who owned that property in its entirety?

19 A Prior to 1997, the property was owned by a Harriet A.
20 Slefkin and a Leonard and Thelma Slefkin.

21 Q And how did they acquire the property?

22 A They acquired it from a Doris Bassinet.

23 Q So the first person in the chain of custody would be
24 Doris Bassinet?

25 A That's correct.

1 Q And at some point, did she convey it to the Slefkins and
2 the Kelleys?

3 A She did.

4 Q About when did that happen?

5 A December of 1973, I believe.

6 Q I'm going to show you what's been marked Government
7 Exhibit 312.

8 MR. CLARK: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. CLARK:

11 Q Do you recognize Exhibit 312?

12 A Yes, I do.

13 Q What is it?

14 A This is the transfer of deed from Doris Bazinet to the
15 Slefkins and the Kelley.

16 Q And that occurred on or about December 4th of 1973?

17 A That's correct.

18 MR. CLARK: I'd offer Government Exhibit 312.

19 THE COURT: Any objection?

20 MR. SHARON: No.

21 THE COURT: 312 is admitted.

22 BY MR. CLARK:

23 Q So after that conveyance, it's owned by two families,
24 the Slefkins and the Kelley; is that correct?

25 A Correct.

1 Q I would like for you to -- did you trace what happened
2 to the Slefkin half of the property?

3 A I did.

4 Q Directing your attention to August of 1983, what
5 happened to the Slefkin half that had been acquired?

6 A Harry Slefkin transferred his interest to Fannie
7 Slefkin.

8 MR. CLARK: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. CLARK:

11 Q I am going to place before you Government Exhibit 313,
12 314, and 315. Do you recognize them?

13 A Yes.

14 Q What are they?

15 A These are the transfer deeds.

16 Q Okay. For the Slefkins' half of the property?

17 A Right, exactly for the Slefkins' half.

18 Q So let's start with Government Exhibit -- well,
19 withdrawn.

20 MR. CLARK: I'd offer at this time Government
21 Exhibits 312, 313, 314, and 315.

22 THE COURT: I think 312 is already in.

23 MR. CLARK: Sorry, Judge. 313, 314, and 315.

24 THE COURT: Any objection?

25 MR. SHARON: No, sir.

1 THE COURT: Each is admitted.

2 BY MR. CLARK:

3 Q With respect to Government Exhibit 313, what happened
4 with the Slefkin half?

5 A Harry Slefkin transferred his ownership interest to
6 Fannie Slefkin, and that would have occurred on or about
7 August 1st of 1983.

8 Q And referring to Government Exhibit 314, what did Fannie
9 Slefkin do with the interest she had acquired from Harry
10 Slefkin, as well as her own interest?

11 A She transferred her interest to a trust, which would
12 have been known as the Scott -- the Fannie Scott trust, and
13 that would have occurred on or about March 4th of 1985.

14 Q 1985 or 1983?

15 A 1985.

16 Q So from that -- I'm sorry. So it appears that
17 Ms. Fannie Slefkin must have changed her name to Fannie Scott?

18 A Yes, according to the deed transfer, there was a name
19 change. That's correct.

20 Q And then what happened with respect to the property that
21 had been held in trust with the one-half interest in the
22 property, did that get transferred?

23 A It did.

24 Q To who?

25 A Carole Swan.

1 Q And is that reflected in Government Exhibit 315?

2 A It is.

3 Q And approximately, when did Carole Swan acquire the
4 Slefkin half of this property from the Scott trust?

5 A On or about October 13th of 1997.

6 Q Now, did you also investigate what happened with respect
7 to the Kelley half of this pit?

8 A I did.

9 Q And when I say half, am I correct that half the
10 undivided one-half interest in the pit?

11 A According to the deed information, yes.

12 MR. CLARK: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MR. CLARK:

15 Q I am going to place before you what I have marked as
16 Exhibits 316 and 317 and ask if you recognize those?

17 A I do.

18 Q What are they?

19 A These are the deed transfers, transferring of the
20 ownership of the Kelley half of the pit.

21 MR. CLARK: I offer Government Exhibits 316 and 317.

22 THE COURT: Any objection.

23 MR. SHARON: No, Your Honor.

24 THE COURT: Each is admitted.

25 BY MR. CLARK:

1 Q So what happened in about May of 1998 with respect to
2 the interest held by the Kelley in this pit?

3 A That was the time when Peter Kelley had transferred the
4 interest, the one-half undivided interest in the pit to Mary
5 Kelley.

6 Q And what did he do that pursuant to?

7 A That was pursuant to the will of Thelma Kelley.

8 Q So did it appear to you that Peter was a personal
9 representative of somebody who was executing the terms of a
10 will?

11 A That's exactly right, yes.

12 Q And what did Mary Kelley do with her interest -- her
13 one-half undivided interest in this pit?

14 A In approximately October, I believe, on or about --
15 approximately, October 20th of 1998, Mary Kelley transferred
16 her one-half ownership to Carole Swan.

17 Q And so is that record as reflected in Government
18 Exhibit 317?

19 A It is, yes.

20 Q So by October of 1998, who owned both halves of the pit?

21 A Carole Swan.

22 Q During the time that she acquired them, these two halves
23 of the pit, in about February of last year, who owned them --
24 I'm sorry February 2013?

25 A Carole Swan.

1 Q What happened in February of 2013?

2 A On or about February 1st of 2013, half of Carole Swan's
3 interest was transferred to her son, Jacob Swan.

4 MR. CLARK: May I approach, Your Honor?

5 THE COURT: You may.

6 BY MR. CLARK:

7 Q I'll show you Government Exhibit 309 and ask if you
8 recognize it?

9 A I do.

10 Q What is it?

11 A This is the transfer deed transferring that one-half
12 interest from Carole to Jacob.

13 Q And on that deed, how do you know that she only
14 transferred one-half of her interest?

15 A Well, it states it on the deed itself.

16 Q She only transferred one-half?

17 A That's correct.

18 Q Now, after this deed was executed -- withdrawn.

19 Was that deed recorded in February of 2013?

20 A According to the registrar stamp, it appears as though
21 this was recorded on August 26th of 2013.

22 Q That would have been after Carole Swan was convicted
23 following her two trials?

24 A Yes.

25 THE COURT: Following her first trial.

1 MR. CLARK: I believe after both, Judge.

2 THE COURT: No, no, it was September.

3 MR. CLARK: After the first one. Sorry, Judge.

4 BY MR. CLARK:

5 Q Now, did you -- was the deed notarized?

6 A It was.

7 Q By who?

8 A Shannon Parent.

9 Q And did you have occasion to meet with Ms. Parent?

10 A I spoke with her over the telephone.

11 Q What did you ask?

12 A I just asked her if she had any recollection of the
13 transaction and being a notary for that particular
14 transaction.

15 Q What did she tell you?

16 A She said she had a vague recollection. She recalled
17 that Jake had telephoned her, said that he and his mother were
18 transferring some property, and that they needed a notary for
19 the deed.

20 Shannon said she agreed to do it, and she recalled that
21 Carole and Jacob went to her home or place of business where
22 she notarized the deed and that was it.

23 Q Did she recall notarizing one or two deeds?

24 A She -- she recollected only one.

25 Q So based upon your title investigation, as you sit here

1 today, who do you believe owns the gravel pit?

2 A I believe it's half owned by Carole and half owned by
3 Jacob.

4 Q According to your investigation, did Jake Swan pay any
5 consideration for the transfer?

6 A I don't believe so. I think according to the transfer
7 tax declaration, I don't believe there was any tax paid.

8 MR. CLARK: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. CLARK:

11 Q I'll show you what's been marked Government 318 and ask
12 if you recognize it?

13 A I do.

14 Q What is it?

15 A This is the real estate transfer tax declaration for the
16 transfer of the gravel pit from Carole to Jacob.

17 Q And does it indicate whether or not any consideration
18 was paid?

19 A It indicates that there was no consideration paid under
20 the exemption claim or parent to child transfer.

21 Q Now, you handled the underlying financial investigation
22 in the criminal case involving the Swans?

23 A I did, yes.

24 Q And as far as your investigation, did you obtain with
25 subpoenas financial information from Northeast Bank?

1 A I did.

2 Q And based upon your review of the information that
3 Northeast Bank provided, did Carole Swan ever under penalty of
4 perjury represent what she believed to be the value of this
5 pit?

6 A She did.

7 Q What did she say was the value of this pit?

8 A 700,000.

9 MR. CLARK: May I approach, Your Honor?

10 THE COURT: You may.

11 BY MR. CLARK:

12 Q I am going to show you Government Exhibit 311 and ask if
13 you recognize it?

14 A I do.

15 Q What is it?

16 A It's a loan application from Marshall and Carole Swan,
17 and it's for a fifth wheel, RV.

18 Q And in connection with Northeast Bank Savings, is that
19 where you found a statement by Carole Swan valuing the gravel
20 pit at \$700,000?

21 A Well, within this file was a -- another loan file, which
22 appeared to be for a refinance on their residence, and it was
23 within that loan file that the declarations as to the value of
24 the pit were made.

25 Q And, again, this was the gravel pit that was located in

GIGUERE - DIRECT EXAMINATION/CLARK; CROSS-EXAMINATION/SHARON

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1 Windsor?

2 A That's correct.

3 MR. CLARK: No further questions, Your Honor.

4 THE COURT: Cross-examination.

5 MR. SHARON: Yes, just one.

6 CROSS-EXAMINATION

7 BY MR. SHARON:

8 Q What year was that loan application taken out, sir?

9 A The loan application for the RV --

10 Q Yes, sir.

11 A -- is 2003.

12 Q 2003?

13 A Correct.

14 Q It was at that time that Ms. Swan estimated the value at
15 700,000?

16 A Yeah, I believe so.

17 Q What year was that estimated at 700,000?

18 A I believe in 1998.

19 Q 1998?

20 A Would have been -- yes.

21 Q Thank you.

22 THE COURT: Anything further?

23 MR. CLARK: No, Judge.

24 THE COURT: Thank you. You may stand down, sir.

25 (The witness, Rodney Giguere, left the witness

1 stand.)

2 THE COURT: Next witness.

3 MR. CLARK: The government calls Mark Stebbins.

4 THE CLERK: Would you please raise your right hand?

5 Do you solemnly swear that the testimony you shall give in the
6 matter now in hearing shall be the truth, the whole truth, and
7 nothing but the truth so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Please be seated. Could you
10 please state your name for the record and spell both your
11 first and last name?

12 THE WITNESS: Mark Stebbins, M-a-r-k
13 S-t-e-b-b-i-n-s.

14 THE COURT: You may proceed.

15 MARK STEBBINS, having been duly sworn, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. CLARK:

19 Q Mr. Stebbins, how are you employed?

20 A I work for the State of Maine, Maine Department of
21 Environmental Protection.

22 Q What do you do for the Department of Environmental
23 Protection?

24 A I'm the mining coordinator.

25 Q For the State?

1 A That's correct.

2 Q What do you do as a mining coordinator or as the mining
3 coordinator?

4 A I run the gravel pit program, quarry program, and the
5 metallic mineral mining program for the department.

6 Q And what do you do in that capacity?

7 A I'm responsible for licensing, inspection, and
8 enforcement.

9 Q What's your education?

10 A I have a BA in geology.

11 Q And what is geology?

12 A The study of rocks and minerals, fishing materials.

13 Q So during the course of your employment, you had
14 occasion to inspect and license gravel mining?

15 A That's correct.

16 Q And what do you do that for, why do you inspect gravel?

17 A Most of the inspections are on facilities that are
18 licensed and required by law to inspect them to see if they're
19 in compliance with the standards contained in the law.

20 Q As part of your training and experience, have you ever
21 had occasion to calculate the amount of material or gravel in
22 a particular gravel pit?

23 A I have, mostly area-based stuff.

24 Q Did there come a time when you were asked to evaluate a
25 gravel pit located at 20 Rod Road in Windsor, Maine, that had

1 been owned in whole or in part by Carole Swan?

2 A Yes.

3 Q And did you do that?

4 A I -- I had been at the Swan pit back in July of 2000 and
5 then in May of 2003, and then I was actually in the vicinity
6 of the Swan pit yesterday, 2014.

7 Q And can you just briefly explain to us what you did
8 there and what you found?

9 A Starting with the 2000 time frame?

10 Q Sure.

11 A 2000 I -- I'm obviously looking to see if the gravel pit
12 required a permit from the state of Maine. Jurisdictional
13 threshold is 5 acres. I actually surveyed that property with
14 GPS equipment in 2000. That's the first time I met Marshall
15 Swan. At that time, the gravel pit did not require a permit.

16 I went back in May of 2003, I did a follow-up inspection.
17 There had been some recent timber harvesting activity on the
18 parcel. I re-surveyed the gravel pit, still not over that
19 5-acre jurisdictional threshold.

20 Hadn't been to the property in that amount of time. I
21 received a call from Michael Ryan, Homeland Security, had
22 asked questions about the Swan pit. I said, I had been there
23 in the past. He asked me if I would accompany him to look at
24 adjacent gravel pits in the vicinity of the Swan pit on Weeks
25 Mills Road, 20 Rod Road.

1 Q And as part of your activity in doing so --

2 MR. CLARK: Your Honor, may I approach?

3 THE COURT: You may.

4 BY MR. CLARK:

5 Q I am showing you what's been marked as Government
6 Exhibit 323 for identification and ask if you recognize it?

7 A Yes, I do.

8 Q What is it?

9 A This is a map that I produced for Michael Ryan for
10 Homeland Security. This is a picture of the Swan pit. And on
11 this it actually shows the Swan pit in yellow, the 2013
12 perimeter, and then it shows the Swan pit in a red outline in
13 1976. In addition, I also laid up the 2-foot contours on this
14 map to show depth and elevation.

15 Q And why did you do that?

16 A Mr. Ryan asked me what I thought the phase site was. I
17 looked at some of my old photos that I took back in 2013. I
18 was estimating maybe a 40-foot head on the existing pit.
19 After we spoke, I went back to our Arc Map GIS data layers and
20 I actually was able to pull up these 2-foot contours, which
21 were done in May of 2013 by NOAA. I was able to zoom in and I
22 can actually see the base elevation of the pit. I can see the
23 top elevation of -- the top of the cut bank and then I could
24 see obviously the elevation as you progress in any direction.

25 Q And from that, what information did you obtain that was

1 useful in evaluating this pit?

2 A Actually, I was trying to calculate what material
3 reserves would be left in that pit.

4 Q And why -- withdrawn.

5 Is the value of a pit, of a gravel pit, related to how
6 much materials are left in it?

7 A Yes.

8 Q So what did you do yesterday?

9 A I actually went out and we were supposed to have access
10 into the Swan pit. I hadn't seen it since 2003. You can look
11 at it through air photos and stuff, but it's not like walking
12 the site. We were denied access.

13 I'm very familiar with the pit to the north, which is not
14 shown on this exhibit, which is 323. That's the Morris pit.
15 And I'm familiar with the pit directly to the west, which
16 would be the Connor pit. And we walked in to both of those
17 gravel pits so I could assess what type of materials that I
18 was seeing that was being processed, what was left in the
19 banks to see if there was continuity between the Swan pit, the
20 Connor pit, and the Morris pit.

21 Q And did you conclude there was continuity between the
22 pits?

23 A Based on the review of these aerial photos, what I have
24 seen in the past, what I saw for material on the ground, it
25 looks like the material runs in a westerly direction from the

1 Swan pit to the Connor pit to the north to the Morris pit, and
2 I also laid up the sand and gravel aquifer maps, I don't think
3 you see it on this photo, which actually outlines ice
4 contacts, sand and gravel deposits, which really encompasses
5 this whole area on the Weeks Mill, which be the Morris pit,
6 the Connor pit, and Swan pit, and there is another small pit
7 there too called Canty.

8 Q And based upon your evaluation yesterday and your
9 knowledge of the area, have you come to a conclusion about
10 approximately how much material is conservatively speaking
11 available in the Swan pit?

12 A The existing pit that you see outlined in yellow is
13 about 13 acres. It's a 25-acre parcel based on some of the
14 tax maps. I did a very conservative estimate going to the
15 west, which would be toward the Connor pit. I looked at the
16 contour interval, which was about 330 feet. The base
17 elevation of the Swan pit, the lowest part based on the
18 contours is 252. I estimated about a 78-foot head between
19 Swan pit and Connor pit. I took a very conservative estimate,
20 taking a 10-acre expansion, taking into consideration setbacks
21 to the public roads, which is like 100 feet, setbacks from
22 property lines, 50 feet. I made an assumption that there
23 could be a written agreement obtained between the Connor
24 property and the Swan property so that that boundary line
25 could be removed so all the material could be excavated. And

1 just based on a 10-acre expansion area, at a 78-foot head, I
2 calculated about 1.2 million cubic yards between the base
3 elevation of the Swan pit going toward the Connor pit. And
4 that was a very conservative estimate.

5 MR. CLARK: I have no further questions, Your Honor.

6 THE COURT: Cross-examination.

7 MR. SHARON: No, Your Honor.

8 THE COURT: Thank you. You may stand down, sir.

9 Thank you.

10 (The witness, Mark Stebbins, left the witness
11 stand.)

12 THE COURT: Next witness.

13 MR. CLARK: The government calls Mike Ryan.

14 THE CLERK: Do you solemnly swear that the testimony
15 you shall give in the matter now in hearing shall be the
16 truth, the whole truth, and nothing but the truth so help you
17 God?

18 THE WITNESS: Yes.

19 THE CLERK: Thank you. Please be seated. Could you
20 please state your name for the record and spell your first and
21 last name?

22 THE WITNESS: Michael Ryan, M-i-ch-a-e-l R-y-a-n.

23 MICHAEL RYAN, having been duly sworn, was examined and
24 testified as follows:

25 DIRECT EXAMINATION

1 BY MR. CLARK:

2 Q How are you employed?

3 A Special agent with the Department of Homeland Security,
4 Office of Inspector General.

5 Q What do you do?

6 A I investigate criminal violations involving homeland
7 security programs and people.

8 Q How long have you been with homeland security
9 investigations?

10 A Since April of 2009.

11 Q Could you just briefly describe your education?

12 A I have a Bachelor's of Science in Civil Engineering from
13 the United States Coast Guard Academy.

14 Q Did there come a time when you conducted an
15 investigation into the value of the Swan gravel pit located on
16 20 Rod Road in Windsor, Maine?

17 A Yes.

18 Q As part of your investigation, can you just briefly just
19 give us a big picture of what you did to determine what value
20 that pit might be today?

21 A I contacted local pit owners immediately adjacent to the
22 property. I talked with contractors, excavation contractors
23 in the central Maine area, also approached several pit
24 appraisers and reviewed some documents held by the town of
25 Windsor.

1 Q And in addition to that, did you also have occasion to
2 speak to the State of Maine mining director?

3 A Yes, I did, Mark Stebbins.

4 Q Now, as part of your interviews, did you interviews
5 Frank Ferraiolo?

6 A I did.

7 Q Who is Frank Ferraiolo?

8 A Frank Ferraiolo is one of the owners of Ferraiolo
9 Construction.

10 Q Was he familiar with the Swan pit?

11 A He was familiar with it. I believe he was last there,
12 physically present probably 10 years ago.

13 Q Did he indicate to you what he would be willing to pay
14 for that pit on a per cubic foot or per cubic yard basis?

15 A Yes, he did. He said between 20 to \$0.30 per cubic
16 yard.

17 Q So if we assume that there was 1.2 million cubic yards
18 in that pit today, was he essentially saying that he would be
19 willing to pay 240- to \$360,000 for the pit?

20 A That's correct.

21 Q Did you interview Steve McGee?

22 A I did.

23 Q Who is Steve McGee?

24 A He's the owner of McGee Construction.

25 Q Was he familiar with the Swan pit?

1 A He was familiar with the Swan pit.

2 Q Does he have occasion -- did he have occasion to make a
3 purchase out of the Swan pit?

4 A He -- he had been present at the Swan pit. I don't
5 recall specifically if he purchased stumpage from the Swan
6 pit.

7 Q When you say purchase stumpage, what do you mean?

8 A Go and buy gravel in bulk for use on other projects.

9 Q So this is sort of a different buyer than would be
10 someone like Frank Ferraiolo who would buy the whole pit, this
11 would be somebody who would just be buying by the cubic yard?

12 A Well, I thought Mr. McGee had interest in both stumpage,
13 sources of gravel for his projects, and also purchasing the
14 pit.

15 Q And what did he tell you that he would estimate that he
16 would pay per cubic yard of material out of the Swan pit?

17 A I believe he said approximately a \$1.75 per cubic yard.

18 Q And did he indicate to you what he thought the Swan pit
19 was worth based upon his knowledge of it?

20 A Yeah, in terms of purchasing the pit, 350,000 to half a
21 million.

22 Q Did you interview Ed Hubbard?

23 A I did.

24 Q Who is Ed Hubbard?

25 A He runs the Morris pit, which is directly north of the

1 Swan pit.

2 Q Had he had occasion to look over the Swan pit over the
3 last 20 years?

4 A He did. He claimed to have known it very well.

5 Q Did he indicate to you what he believed to be a fair
6 price for the Swan pit?

7 A He did. He indicated that he would advertise the Swan
8 pit at \$1 per cubic yard, but would not sell it for anything
9 less than \$0.75 per cubic yard.

10 Q So his value, assuming at least 1 million cubic yards
11 would be in excess of 750,000?

12 A Correct.

13 Q Did you interview John Sturgeon?

14 A I did.

15 Q Who is John Sturgeon?

16 A He is a project manager for Sargent Corporation formerly
17 known as H.E. Sargent.

18 Q Did Sargent purchase gravel out of the Swan pit?

19 A They did.

20 Q Would that have been in approximately 2011 and 2012?

21 A Yes, August of 2011 to September 2012.

22 MR. CLARK: May I approach, Your Honor?

23 THE COURT: You may.

24 BY MR. CLARK:

25 Q I'll show you what's been marked Government Exhibit 322

1 for identification and ask if you recognize it?

2 A I do.

3 Q What is it?

4 A It is a break down of purchases from the Swan pit in
5 2011 to 2012.

6 Q That would have been by Sargent?

7 A By Sargent Corporation.

8 Q And did you have an opportunity to review that document
9 before your testimony?

10 A I did.

11 Q What did Sargent pay per cubic yard for the material
12 that it was purchasing out of the Swan pit in 2011, 2012?

13 A Based on my analysis, they purchased just over 100,000
14 cubic yards and paid over \$212,000. If you do the math, it
15 comes to roughly a 1.87 per cubic yard. Within that \$1.87,
16 there is some allowances for tax and related equipment
17 charges, but \$1.87 is what the documents show.

18 Q Did you ask him whether or not he thought that the
19 current -- withdrawn.

20 How, if at all, did he react when he was asked whether
21 the Swan pit was \$40,000?

22 A He said that was low.

23 Q Did you interview Tim LePage?

24 A I did.

25 Q Who is Mr. LePage?

1 A He is a project superintendent for Sargent Corporation.

2 Q Is he familiar with the Swan pit?

3 A Yes. He oversaw some of the stumpage that they drew out
4 of there in 2011 and 2012.

5 Q Did you ask him whether or not he thought that the Swan
6 pit's current value was \$40,000?

7 A Yes, at that point, he laughed and said he would
8 purchase it.

9 Q Did he indicate to you what he thought a fair market
10 price for the Swan pit would be?

11 A He didn't, other than to say \$0.25 to \$0.30 per cubic
12 yard and he went on to say that he would buy it right now for
13 \$100,000.

14 MR. CLARK: No further questions.

15 THE COURT: Cross-examination.

16 MR. SHARON: No, Your Honor.

17 THE COURT: Thank you. You may stand down, sir.

18 Thank you.

19 (The witness, Michael Ryan, left the witness stand.)

20 MR. CLARK: The government rests.

21 MR. SHARON: We have no testimony about that, Your
22 Honor.

23 THE COURT: All right. What should I make of this?

24 MR. CLARK: Judge, we believe that the -- we have
25 proved that Carole Swan is at least a 50 percent owner of the

1 gravel pit. We believe that, in fact, she should be -- she
2 should be considered to be the 100 percent owner of the gravel
3 pit because following her indictment in this case, following
4 the superseding indictment in this case, she conveyed a one-
5 half interest in it to her son at a time when she had to know
6 that she was facing millions of dollars in fines and
7 restitution, which was mandatory. That deed was not recorded,
8 so officially under Maine law, I do not believe it was
9 recognizable until it was recorded in August at the time at
10 which she was convicted already of the tax charges and the
11 workers' compensation charges, which would in and of
12 themselves render her subject to restitution in an amount
13 significantly more than the \$5,000 net worth that she claims.

14 MR. SHARON: I have no argument.

15 THE COURT: All right. So this actually goes to the
16 amount of fine that should be imposed on her; is that correct?

17 MR. CLARK: It goes to the amount of fine and also
18 what sentence should be imposed.

19 THE COURT: Okay. Thank you.

20 Are there any other issues from the government's
21 perspective?

22 MR. CLARK: No, Your Honor.

23 THE COURT: Any other issues from the defense?

24 MR. SHARON: No, sir.

25 THE COURT: It may be helpful to counsel that I do

1 the sentencing findings here because the findings are slightly
2 different with the exclusion of the acquitted conduct. Let me
3 run through this and give you an opportunity to respond to it.
4 Under group 1 which is Counts 1, 2, and 3, the Hobbs Act
5 extortion under color of official right, the United States
6 Sentencing Commission Guideline for violation of 18 U.S.C.
7 Section 1951(a) is found in United States Sentencing
8 Guidelines Section 2C1.1(a)(1) it calls for a base offense
9 level of 14. As the offense involved more than 1 extortion
10 attempt, 2 levels are added, bringing the offense level to 16.
11 Using the table found in Section 2B1.1(b)(1)(C), as the total
12 value of the payments demanded, including the attempted
13 extortion was \$20,000, 4 levels are added, bringing the
14 offense level to 20. Pursuant to Section 2C1.1(b)(3) as the
15 defendant was an elected public official, 4 levels are added,
16 bringing the offense level to 24. Pursuant to United States
17 Sentencing Guidelines Section 3C1.1 as the defendant
18 obstructed justice, 2 levels are added, bringing the offense
19 level to 26.

20 Group two. Counts 4, 5, 6, 7, and 8, tax fraud and false
21 statements. The United States Sentencing Commission Guideline
22 for violation of 26 U.S.C. Section 7206(1) is found in
23 Section 2T1.1 and Section 2T4.1(F) and calls for a base
24 offense level of 16. As the defendant has obstructed justice,
25 there is a 2-level increase, bringing the offense level to 18.

1 Group three. Counts 9 and 11, false statement to obtain
2 Federal Workers' Compensation. The United States Sentencing
3 Commission Guideline for violation of 18 U.S.C. Section 1920
4 is found in United States Sentencing Guideline
5 Section 2B1.1(A)(2) and calls for base offense level of 6.
6 Pursuant to Section 2B1.1(b)(1)(G) as the total loss in this
7 case was \$75,765.28, 8 levels are added, bringing the offense
8 level to 14. As the defendant has obstructed justice, there
9 is a 2-level increase bringing offense level to 16.

10 Multiple count adjustment. The adjusted offense level
11 for group 1 is 26. The adjusted offense level for group 2 is
12 18. The adjusted offense level for group 3 is 16. As the
13 greater offense level is 26, making the combined adjusted
14 offense level 27. The defendant's criminal history category
15 is category I. For a total offense level of 27 and a criminal
16 history category of I, the applicable guideline range for
17 imprisonment is 70 to 87 months. The defendant is not
18 eligible for probation. Supervised release is 1 to 3 years.
19 The fine range is from \$12,500 to \$125,000. Ms. Swan does
20 have the ability to pay a fine. Restitution shall be ordered
21 in the total amount -- I have here of \$91,396.18, but I need
22 to revise that, don't I, based on -- what would the current
23 figure be?

24 MR. CLARK: Your Honor, that is correct. The total
25 figure of what we heard today 106,346.18.

1 THE COURT: Thank you.

2 A special assessment fee of \$100 per count for a total of
3 \$1,000 is mandatory.

4 Is there any objection to these findings on the part of
5 the government?

6 MR. CLARK: No, Judge.

7 THE COURT: On the part of the defendant?

8 MR. SHARON: No, Your Honor.

9 THE COURT: Mr. Clark, would you like to be heard on
10 sentence?

11 MR. CLARK: Yes, Your Honor. Your Honor, Carole
12 Swan is before the court today to be sentenced for extorting
13 Frank Monroe Construction on three occasions as an elected
14 public official, for filing five false income tax returns for
15 calendar years 2006 to 2010, and for workers' compensation
16 fraud. And that's exactly what she did. Between 2010 and
17 2011, she extorted Frank Monroe's business three times. And
18 Frank Monroe was an easy mark for this defendant. He had a
19 valuable sand contract and he had a huge investment in plowing
20 and sanding equipment. So when Carole Swan, Chelsea's 20-year
21 selectman and de facto road commissioner, demanded payment to
22 keep his contracts, she got paid. That's precisely how Carole
23 Swan worked. Because if you didn't do what Carole Swan told
24 you to do in Chelsea, you paid the price. She was the
25 puppeteer. Everyone else, including Frank Monroe, were

1 puppets to be manipulated. But as she admitted in her
2 interview at the Kennebec Sheriff's Office after she was
3 caught red-handed extorting \$10,000 from Frank Monroe, she
4 admitted she expected to receive \$10,000 that day. She had a
5 psychological problem for it and needed counseling --
6 counseling for it. She had received payments from other
7 contractors to grease the wheels. She had taken 25- to
8 \$30,000 over the years for greasing the wheels and looking the
9 other way on construction jobs. And as she said, she was the
10 guilty one. And what she said then was true. And those were
11 the last true words spoken by this corrupt public official in
12 this proceeding.

13 So the first point here is that Carole Swan has been a
14 corrupt public official for a very long time. It didn't start
15 with Frank Monroe, but it ended with him. And Carole Swan is
16 a serial, pathological liar. Carole Swan took that witness
17 stand three times. And all three times, she falsely testified
18 under oath that she was not extorting Frank Monroe, but she
19 was, in fact, investigating him for delivering short loads of
20 sand. She said Frank Monroe was bribing her to keep his theft
21 of sand a secret. And then she said that she didn't tell the
22 Kennebec Deputy Sheriffs about her investigation of Frank
23 Monroe during the interview because Greg Lumbert worked for
24 both Monroe and the Kennebec Sheriff.

25 She also falsely testified that she did not lie to obtain

1 workers' compensation benefits. She also falsely testified
2 that she had no idea how much Marshall Swan or Swan
3 Construction made and that her tax returns were not false.

4 We have detailed her false testimony in our sentencing
5 briefs, and we will not repeat it here. Suffice it to say,
6 however, that her extensive testimony was false, perjurious,
7 was rejected by Magistrate Judge Kravchuk and a jury twice and
8 was certainly the basis for this court to find that her
9 obstruction of justice was pervasive.

10 So the second point is that Carole Swan obstructed the
11 prosecution of this criminal proceeding on multiple occasions.

12 Now, Carole Swan's extortion of Frank Monroe was
13 criminal, but Carole Swan was not just an ordinary criminal.
14 Time and again she sought to humiliate Frank Monroe. The
15 defendant's negative impact on Monroe's life cannot be
16 overstated.

17 Frank Monroe was a victim of Carole Swan's extortion, but
18 Carole Swan made sure that he was vilified in the press as a
19 cheater and a briber, and that is simply not true. It's not
20 true now and it never was true.

21 The defendant destroyed Frank Monroe's family. She did
22 everything she could do to destroy his reputation in the
23 community. And her efforts continue right through to today's
24 proceeding.

25 Frank Monroe has suffered years of local ridicule with

1 people claiming that he was at fault and that he bribed her
2 and that wasn't the case.

3 And as this court knows, it's critical for people like
4 Frank Monroe to be willing to step up and bring people like
5 Carole Swan to justice. That Carole Swan subjected Frank
6 Monroe to false claims that he was delivering short loads of
7 sand and bribing her over the past three years is
8 unconscionable.

9 So the third point is that corrupt public officials who
10 blame their victims for their crimes should receive very
11 lengthy sentences.

12 And as I said, the defendant's efforts to deceive
13 continue even to this day. The defendant has not accepted
14 responsibility for her conduct. Instead, she offers a
15 forensic evaluation from Peter Donnelly, based on one,
16 three-hour evaluation he conducted on December 30th of 2013,
17 after her multiple convictions for extortion, tax, and
18 workers' compensation fraud.

19 In the defendant's version of the allegations, she
20 contends, I didn't know I was doing anything wrong with
21 worker's comp. I can't balance a checkbook.

22 On the tax charges she says, that in her husband's
23 business, the books really didn't get done.

24 And on the extortion charges, she says, there is a sand
25 guy who was shorting the town by using our sand in other

1 towns, he was giving me money. I kept it. I told the town
2 clerk that I was going to turn him in, but I waited too long
3 to do so. I developed a relationship with him. I soaked up
4 the attention that he gave me, that I wasn't getting at home.

5 Your Honor, you heard the tape recordings where she said
6 she didn't want to talk on the phone. You heard the interview
7 in which she admitted she was guilty. Then you listened to
8 the defendant testify falsely. You watched as she
9 intentionally defied your order not to testify about acquitted
10 conduct at her -- conduct at her second trial, and despite her
11 attorneys' instruction not to do so. So the fourth point here
12 is that the defendant's effort to manipulate and deceive
13 continues even to this day as she faces sentencing.

14 Now, in addition to Carole Swan's criminal extortion and
15 her abuse of her victim, we now know that over a five-year
16 period she failed to report conservatively speaking about
17 \$650,000 in income, almost all of which she personally handled
18 as the bookkeeper for Swan Construction thereby evading
19 \$145,000 in taxes. We say conservatively speaking because, as
20 this court is aware from the trial testimony, this case was
21 proved by specific items of income that were not reported.
22 Some income could not be proved at trial due to unavailable
23 witnesses, and no deduction has yet been made for the hobby
24 harness horse racing business that Carole Swan testified she
25 did not own, she was not actively engaged in, that never

1 earned a profit, but yet produced deductible tax losses of
2 \$173,000 over five years. So the tax loss in which the tax
3 sentencing range is based is extremely conservative.

4 And the fifth point is that the defendant's fraudulent
5 activities were as you -- as they were for her husband and as
6 you found a way of life.

7 Now, in addition to Swan's criminal extortion and her tax
8 fraud way of life, the defendant was also defrauding the
9 workers' compensation program. She lied on August 1, 2008,
10 and again on May 7, 2010, when she claimed to be unemployed
11 and unable to work and when she failed to report her ownership
12 interest and active participation in the operation of Swan
13 Construction, her ownership of her harness horse racing
14 business that she was writing off, and when she failed to
15 disclose her activities as a selectman and assessor for
16 Chelsea, particularly her activities in connection with the
17 Windsor Road culvert, which took place between April of 2007,
18 and April of 2008.

19 Recall the testimony of Peter Hanson describing her
20 climbing down into the crater left by the washed out Windsor
21 Road culvert bridge and all of the Chelsea coworkers and her
22 best friend and sister-in-law who all testified they never
23 even noticed any disability or inability to raise her right
24 arm.

25 She lied to the workers' compensation program when she

1 failed to disclose the \$3,000 she extorted from Frank Monroe
2 in March of 2010. And she lied in May of 2010 when she wrote,
3 I do not work. I cannot work. I cannot even clean my house
4 or blow dry my hair.

5 And we all watched as the defendant feigned being unable
6 to lift her right arm or walk at her trial on workers'
7 compensation fraud, only to witness her miraculous recovery at
8 the second trial on extortion when her claimed disability was
9 no longer required or apparent.

10 The defendant's conduct over the course of two trials is
11 best described in two words, insatiable greed. We know now
12 that the defendant viewed the town of Chelsea's road budget as
13 Swan Construction's own private treasure chest. She was a
14 selectman and for an extended period of time, the de facto
15 road commissioner. No other contractor had a chance of
16 getting any meaningful roadwork in Chelsea without
17 subcontracting with Swan Construction. The defendant made
18 sure Swan Construction got the bulk of the road contracts in
19 Chelsea by twisting the arms of Chelsea's road commissioner or
20 elected selectmen, such as Selectman Richard Danforth and Guy
21 Berthiaume, as they both testified.

22 Carole Swan pocketed over \$75,000 tax free for lost wage
23 benefits, falsely claiming to be completely unable to work and
24 disabled, all the while she was the office manager for Swan
25 Construction doing the banking, dealing with the taxes, and

1 working as a selectman and the town assessor, steering
2 contracts to Swan Construction, like the Windsor Road culvert
3 project, and charging Chelsea \$130,000 for a \$58,000 culvert.

4 In short, this millionaire defendant was collecting
5 disability that she did not deserve, cheating on her taxes,
6 but that wasn't enough. She had to extort Frank Monroe.

7 So the sixth point is that this is not a heartland case
8 because of the defendant's insatiable greed. The defendant's
9 crimes take place against a backdrop of insatiable greed,
10 public corruption, and other contempt for the victim of her
11 crimes, and they cry out for specific deterrence. And this
12 court knows all too well of the corrosive effect that this
13 type of criminal activity has on small Maine communities.
14 When millionaire elected public officials extort local
15 contractors, paying no income taxes, fraudulently collect
16 disability benefits, and live large with beautiful homes, new
17 luxury automobiles every other year, built-in swimming pools,
18 and gravel pits worth a half a million dollars, it destroys
19 the public confidence in our political system, our tax system,
20 and our disability programs.

21 But more than that, in this case, the defendant's
22 activities destroyed her own town. Her steering of stacked
23 contracts to Swan Construction resulted in multiple payments
24 under \$10,000 to skirt the Town's bidding ordinance was
25 corrosive. Her steering of the Windsor Road culvert project

1 to Swan Construction was corrosive. But perhaps most
2 corrosive of all was her delivery of a two-year plowing
3 extension contract to Frank Monroe when the board of selectmen
4 had only authorized a one-year extension. That was probably
5 the most corrosive, because it resulted in a \$100,000 lawsuit
6 having been filed by Frank Monroe against the town of Chelsea.
7 Frank Monroe, as a result of that, lost a very valuable
8 plowing contract, and Chelsea recently had to pay him \$20,000
9 to settle his claim. And all -- why, why did this happen?
10 Because Carole Swan lied to the Town about what the contract
11 she had entered into with Frank Monroe was and lied to Frank
12 Monroe about what the contract that had been authorized by the
13 town of Chelsea -- they had agreed to enter into.

14 So this is a case that calls out, it cries out for
15 general deterrence, in addition to specific deterrence.
16 Elected public officials who extort local contractors must
17 understand that prosecutions and serious prison terms will
18 flow from that conduct. Some people claim that small
19 businesses are the agents of growth in this country, and
20 that's precisely what the defendant ran. Swan Construction
21 was a small business that generated up to a million dollars a
22 year in revenue according to the defendant. But we know now
23 that this small businesswoman paid almost no income taxes for
24 five years because she was cleating.

25 Similarly situated small businesses have to know that if

1 they cheat on their taxes, underreporting income, and
2 overstating deductions for five years, they are going to go to
3 jail for a long time.

4 So if this were just an extortion and a tax and
5 disability fraud case, a sentence at the high end of the
6 guideline would have been appropriate.

7 But that wasn't enough. As part of the presentence
8 investigation in this case, the defendant lied to the U.S.
9 Probation Office about her assets, falsely claiming to be
10 unable to pay a fine. According to the presentence
11 investigation report, based on the information that she had
12 provided to them, the defendant -- or the probation office
13 concluded that the defendant did not have the ability to pay a
14 fine because she had assets of \$36,135 -- thousand,
15 liabilities of \$28,978 and a net worth of \$5,909.

16 The initial PSR report was prepared in December of 2013
17 and the revised report was prepared in January of 2014. But
18 as the court now knows, this defendant failed to report her
19 ownership of 50 percent of a gravel pit that she had valued at
20 \$700,000, and she conveyed 50 percent of that gravel pit for
21 no consideration to her son by deed dated February of 2013,
22 but not recorded until August of 2013, following her
23 conviction or the conviction in her first trial.

24 And she also failed to report her ownership of real
25 property located on McLaughlin Circle in Chelsea, which was

1 sold in April of 2014.

2 With all that, Your Honor, because of her false
3 testimony, the defendant faces a sentencing range under the
4 guidelines of 78 to 87 months. We recommend a sentence of at
5 least 10 years in prison and a \$125,000 fine.

6 THE COURT: Thank you.

7 Mr. Sharon.

8 MR. SHARON: Yes, we have some people we would like
9 you to hear from, Your Honor, please.

10 THE COURT: Sure. And by the way, I should note
11 that I have received a packet of information from you,
12 Mr. Sharon --

13 MR. SHARON: Yes, Your Honor.

14 THE COURT: -- that sets forth 21 separate exhibits.

15 MR. SHARON: I'd move for the admission of it,
16 please, Your Honor.

17 THE COURT: All right. And you have seen each of
18 those, Mr. Clark?

19 MR. CLARK: I have, Your Honor.

20 THE COURT: And do you have any objection to them?

21 MR. CLARK: No.

22 THE COURT: Each is admitted. I will note for the
23 record that Exhibits 15 through 21 are all medical or
24 psychiatric records and under the teaching of the Kravetz
25 case, I find that the public interest in those personal

1 records is exceeded by the need for privacy of her medical and
2 psychiatric condition and, therefore, I am sealing each of
3 those Exhibits 15 through 21 under Kravetz.

4 The remaining Exhibits 1 through 14, which are letters
5 from family members, friends, and others, are open to the
6 public.

7 MR. CLARK: Just one other point, Your Honor, that we did
8 not object to their admission does not mean we agree with
9 them, particularly with respect to Government Exhibit 20,
10 which is Dr. Donnelly's psychological report. We would ask
11 that the court read that document in the context of the
12 defendant's version of the allegations.

13 THE COURT: Right. No, I read the -- I read the
14 report with my full understanding of this long and complicated
15 case.

16 Mr. Sharon.

17 MR. SHARON: Yes, Your Honor. I'll call Linda
18 Sadoff.

19 Please identify yourself to the court, please.

20 THE WITNESS: Yes. Good afternoon, Your Honor. My
21 name is Linda, L-i-n-d-a, Sadoff, S-a-d-o-f-f.

22 MR. SHARON: Can you tell the court, please, your
23 relationship to this case and to Carole Swan.

24 THE WITNESS: Yes, I am a psychotherapist. I
25 maintain a private practice in Hallowell, Maine. And Carole

1 Swan participated in counseling with me over approximately an
2 eight-month period commencing in August 2013 until recently.

3 And, Your Honor, I have maintained my psychotherapy
4 practice for 14 years. Prior to that time, I was an attorney
5 practicing in state and federal courts in Maine, representing
6 individuals, and I'm currently a member of the bar
7 association, but I am no longer in the active practice of law.

8 THE COURT: All right.

9 THE WITNESS: If there is a single issue that I
10 would like to speak to, Your Honor, it is my observation from
11 my work with Ms. Swan starting in August is that she is a work
12 in progress; that she very actively participated in her
13 counseling with my office, in my office. The issues that we
14 focused on were the impact of the childhood sexual abuse and
15 the impact of the domestic violence.

16 We also addressed what kind of person Carole wanted to be
17 solidifying, I believe, an intention to working toward
18 becoming the best person that she could possibly be. We did
19 not address to any significant extent the circumstances which
20 are subject to the litigation before this court.

21 Ms. Swan arrived highly-motivated for most sessions.
22 Typically, she would begin a session with a question. She
23 might say, last week you spoke about the cycle of the abuse.
24 I have been thinking about it all week. I have got a
25 question. Her question might be, how did I ever end up in

1 this relationship? Why did I remain in this relationship for
2 so long? What will be the impact on my sons of having
3 observed the abuse that they observed?

4 She struggled -- and this was really the primary focus,
5 she struggled with the question as to whether or not to remain
6 in this marriage. She struggled with the dichotomy between
7 the fact that she had been subjected to terrible psychological
8 and physical abuse, but at the same time, she was very
9 attached to her husband. She loved her husband. And so this
10 was really what she was struggling with.

11 They did not live together until a few months ago, it is
12 my understanding, when she moved back into the family home in
13 part so that she could be closer to her sons to whom she is
14 very devoted. And so -- and then she very much valued
15 maintaining an effect of a co-parenting relationship and
16 ultimately decided the further decision about divorce so that
17 her sons would not be subjected to the stress given all that
18 her sons have been through.

19 And then finally she engaged in some future oriented
20 thinking. We anticipated how she might use her time of
21 incarceration in a positive and constructive way, learning
22 more skills, perhaps -- perhaps learning how she could
23 understand more about her own domestic abuse so perhaps to be
24 helpful to other women.

25 So in conclusion, Your Honor, in imposing sentence today,

1 I appreciate that the court will be considering a variety of
2 very compelling considerations. What I wanted to share was my
3 observation in working with Carole Swan since this past
4 August, at least in her counseling, that she was very much a
5 work in active progress, becoming more reflective about
6 herself. And hopefully, and my confidence, hopeful confidence
7 is that she will take that into the future.

8 Thank you very much, Your Honor.

9 THE COURT: Thank you very much, ma'am.

10 MR. SHARON: Thank you, Your Honor. I would ask
11 John Swan.

12 THE WITNESS: Good afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 THE WITNESS: My name is John Swan, and I am
15 Carole's son. I was recently reading through some quotes
16 online when one jumped out at me. A famous Lebanese author,
17 Kahlil Gibran once declared, you give but little when you give
18 of your possessions. It is when you give of yourself that you
19 truly give.

20 This quote reminded me of my mom for multiple reasons.
21 There have been countless times when either I've broke or lost
22 something in my life which caused me to become quite upset.
23 One thing my mom has always told me, though, is that items do
24 not last forever, but people can make memories that do last
25 forever.

1 My mom has always made it a point to help me realize that
2 at the end of the day, it's not how many items you have or
3 what kind of clothes you wear, but instead life is all about
4 what is in your head.

5 Memories have the ability to last a lifetime. Without my
6 mother reminding me of this, I would not have such a great
7 appreciation for life and all the people that are along for
8 the ride with me through all of the ups and downs that it
9 reveals.

10 The quote also applies to my mom in the aspect of giving
11 back to your community. My mother has spent countless hours
12 fundraising and putting time into planning and executing
13 various town events. I am fortunate to have been able to help
14 my mom in numerous volunteer opportunities. A couple of the
15 things that I was able to contribute to in the community with
16 my mom includes decorating the Welcome to Chelsea signs with
17 flowers in the summer and wreaths in the winter, and helping
18 with Chelsea Cares Fund suppers to raise money for town
19 citizens in desperate need of essential things, such as heat
20 or medicine.

21 However, where I really learned the importance of giving
22 back to the community was through the annual Fun Run at the
23 Chelsea school. For many years, the school donated one bike
24 to raffle off for the children, but then my mom came along.
25 My mother went around to local businesses and managed to get

1 eight additional bikes donated for the Fun Run to raffle off
2 for the children. But then my mom -- excuse me. So to get
3 the eight additional bikes donated for the Fun Run so that
4 each grade, kindergarten all the way up to eighth could have a
5 student receive a bike. One year when the bikes were being
6 raffled off, my name was the last one called. The bike that
7 was left happened to be the one that my father donated also.
8 I thought that it was a cool bike at the time, but when my
9 name was called, I looked at my mom and said, I already have a
10 bike.

11 Knowing that my mom had put so much time into the Fun
12 Run, I told them to raffle it off again. I knew that there
13 were other kids who would really enjoy the bike because they
14 might not have had one. That was when I truly understood the
15 feeling of giving back. That was one of the best things that
16 I have ever felt and without my mom, I never would have
17 experienced that feeling.

18 My mom has also been extremely giving as a mother. From
19 the time that I started having homework when I was little, I
20 would come home and my mom would help me with it. When I
21 reached about third or fourth grade, it got to the point where
22 my mom struggled to help me with my homework. Even though she
23 couldn't always help me figure out how to complete my
24 homework, my mom would lay down on the couch right behind
25 where I sat at the dining room table to complete my

1 assignments. One of the first questions she would always ask
2 me when I got home or when she picked me up from school was,
3 how much homework do you have? My mother was extremely
4 influential in establishing my strong work ethic with
5 homework.

6 But whether it was homework, sports, or more recently
7 picking a college last year, my mom has been supportive of my
8 dreams and desires every step of the way. I have never had to
9 question whether or not my mom would help me achieve my goals
10 because she has always been there for me.

11 My mother is the most generous person that I have ever
12 met, there is no question about that. At times she has been
13 too generous and too tough for her own good.

14 With the combination of a major injury, fibromyalgia, and
15 stomach blockages that once sent her by ambulance to Boston,
16 my mom has hidden the pain from my brother and I because she
17 has never wanted us to worry about anything.

18 Even though my mother doesn't like me to worry, I find
19 myself doing quite a bit of it lately. I worry that I am
20 going to be without both of my parents for what I consider to
21 be a substantial amount of time. If there is any way possible
22 for me to have one parent remain a part of my everyday life,
23 Your Honor, I would appreciate it if that option was explored.
24 Thank you.

25 THE COURT: Thank you.

1 MR. SHARON: Another family member, Your Honor.

2 Sharon Nichols.

3 THE WITNESS: Good afternoon, sir.

4 THE COURT: Good afternoon.

5 THE WITNESS: My name is Sharon Nichols. I'm Carole
6 Swan's older sister, so, therefore, obviously I have known her
7 all her life.

8 When Johnny told you that she is the kindest person that
9 he knows, I have to tell you that he's telling you the
10 absolute truth. She is the kindest person that I know.

11 She has been accused of being the most horrible liar in
12 the world. I am telling you, sir, there is so much truth to
13 these allegations of the pain that this woman has suffered all
14 her life. She spent the first several years of her life with
15 me finishing her sentences. She couldn't speak. She hid from
16 people. She was a timid, little girl who couldn't convey even
17 to her most loved family what she was trying to tell them.
18 She hid from the school bus, not daring to go to school. She
19 has known pain and abuse that is beyond what you can imagine.
20 And I am telling you the God honest truth.

21 God bless her husband, I'm sure the man is very ill, but
22 if you could witness what I have witnessed and the fact that
23 my sister never had the strength to remove herself from these
24 situations because she never had any self esteem, she has been
25 so injured through her life.

1 One salvation was being able to be responsible for
2 herself. At the age of 17, she was supporting herself with
3 two jobs, trying to go to school. And due to her inability to
4 speak, she had lots of learning disabilities with reading. I
5 spent hours reciting homework to her, as did other family
6 members.

7 She worked so hard, but I think a lot of that led her to
8 feeling she just wanted people to love her. She has helped
9 countless, countless family members that have suffered from
10 depression and their inability to function. Myself, I lost a
11 husband and had a young daughter. I was alone with \$28 in the
12 bank, just getting by paycheck-to-paycheck, and my sister came
13 to me and she said, we will survive this. If I have to work
14 around the clock, I can survive on three hours of sleep. That
15 child will feel loved. She won't feel rejected. She will be
16 a productive person. And I will be there for you every step
17 of the way.

18 And, Your Honor, she has been every day. No matter --
19 all the children in the family she calls to see, are they
20 happy? She can recite to you every birthday of every child.

21 But she entered into a relationship where she was
22 horribly abused. I have defended her from her husband. I
23 have removed her. I have bought her bigger sunglasses to
24 cover black eyes. I have seen the bruises when her shirt
25 would lift, and you know what she would say to me, it was my

1 fault, I said something wrong.

2 So when -- I'm sure a lot of her crime is to avoid the
3 pain. And it got to the point where she was so embarrassed,
4 she couldn't share it with us. She couldn't share it with her
5 own children. And I know that errors were made, but I know my
6 sister spent years, years -- she would start to tell me
7 something -- she would repeat herself like three times within
8 an hour, telling me the same thing. She did not know a lot of
9 what was going on around her, day after day. Her injuries,
10 her so-called, known injuries -- I have seen times when she
11 would take Johnny to a baseball game and her health was so bad
12 she couldn't sit with the other mothers on the stand. She
13 would have to lie down in her vehicle while Johnny practiced
14 ball.

15 I am sorry if I am taking too much of your time, but I
16 feel that this is so important. If there is any mercy or if
17 there is a God anywhere, can someone please help with her
18 pain? She has given so much. She has been so abused. And I
19 am so proud of how hard she has worked to try to recognize
20 what her problems are and to make a difference for herself and
21 for all of us that love her.

22 And so when she came to Bangor last year, she looked at
23 me and she said, oh, my God, I never knew that I could get
24 away. She said, I'm probably headed to jail and I have a
25 sense of relief because my children are with me. We are

1 protected, and we're safe.

2 Can you just imagine feeling that way all your life?

3 It's been an atrocity.

4 Thank you, sir.

5 THE COURT: Thank you, ma'am.

6 THE WITNESS: Your Honor, I am Patricia McLaughlin,
7 Carole Swan's mother. I would like to offer to you some
8 information pertaining to my daughter's life. I have watched
9 her over the past 20 years and have seen the suffering she has
10 endured from the injuries she received while delivering mail.
11 She has gone through surgery, therapy. When that didn't work,
12 she started on injections that would put her on the couch for
13 two days. I know because I would have to go and stay with her
14 while Johnny went to school, all the while the doctors would
15 give her more pills for pain to take.

16 Between the pains and her abuse, I understand her life
17 being in such a turmoil. Let's touch on the abuse she has
18 suffered by the hands of her husband. I won't go into that
19 because I know you have heard it all before.

20 I have noticed through counseling she is a much calmer
21 person, also not repeating things that she had told you a few
22 minutes ago.

23 Her life with Marshall was to do what he said.
24 Everything had to be done to make him look good. I feel very
25 strong -- strongly this whole mess was dictated by him.

1 Has anyone thought what this might do to their sons?
2 Johnny needs to finish his college education. He's been a top
3 student all through the school years. He knew this would
4 bring happiness into his mother's life, and she was always
5 there to cheer him on. No mother to call and tell what good
6 grades you get and test results and so on. Even through all
7 of this, he has completed his freshman year at Thomas College
8 with a 4.0 average and the presidential award.

9 If you could only see how surest with rehabilitation that
10 Carole is, I am sure this family could come together and pay
11 the restitutions within a few days.

12 I take full responsibility for the part I have played in
13 making Carole's life so mixed up. For that, I am truly sorry.

14 I am sure I sound like all elderly mothers, wondering if
15 they will live long enough to see their child again, who I
16 love very much, and worry about if her health in prison will
17 ever be addressed.

18 I ask that some of the good that Carole has done to be
19 taken into consideration, that her sentence be given in a fair
20 way and not exceed her husband's. I am sure you will be fair.
21 Thank you, Your Honor.

22 THE COURT: Thank, you ma'am.

23 MR. SHARON: Thank you, Your Honor.

24 Jerry Morin, please.

25 THE WITNESS: Your Honor, I have been in the family

1 for 22 years. Carole was there when me and my wife got
2 married, helped me move into town so I could pursue concrete
3 with them, helped me straighten out my life by hard work,
4 working along with building and pouring concrete, told me to
5 get my GED and I did. I got it in New Hampshire when I was
6 doing time, put me in some work with some other family members
7 like her mom and her son, Jake.

8 She's always shown me love and respect. Since I have
9 been with the family, I have been in zero trouble. I love
10 them all.

11 Thank you for the opportunity to speak, sir.

12 THE COURT: Thank you, sir.

13 THE WITNESS: Yeah.

14 THE WITNESS: Earl Vannah. I want to say I have
15 been a contractor for the town of Chelsea in the past for
16 winter -- winter work and for summer work. I have worked for
17 them when Carole was a selectman there, and I have worked for
18 them since she's been gone. And in all of the times that I
19 have done any work for them and stuff, I have always dealt
20 directly with whoever happened to be the town manager at the
21 time and really never had any direct contact for any reason
22 with Carole Swan or any of the other selectman. It was always
23 with the acting town manager at the time. And that's what I
24 would like to say.

25 THE COURT: All right. Thank you very much, sir.

1 THE WITNESS: Yeah.

2 MR. SHARON: Ms. Vannah.

3 THE WITNESS: Good afternoon, Your Honor.

4 THE COURT: Good afternoon. Would you state your
5 name for the record?

6 THE WITNESS: Heather Vannah.

7 THE COURT: Yes, ma'am.

8 THE WITNESS: I would like to touch on a couple of
9 things. I am good friends with Carole. I am good friends
10 with her two sons. I am going to try not to be emotional.
11 But where I am coming from today is when I was a young adult,
12 I had a parent who went to prison and it had a huge affect on
13 my life. So if I can just ask that you can spare, have any
14 mercy, or compassion for this family and these two boys, I
15 just ask that. Thank you.

16 THE COURT: Thank you, ma'am.

17 THE WITNESS: Good afternoon, Your Honor. My name
18 is a Loren Rideout. I have known the Swan family as long as I
19 can remember. I grew more close to the Swans as I became a
20 young adult. I got the privilege to watch both of the boys
21 grow up. My grandfather worked along with Marshall for many
22 years. I always felt like Carole was a second mother to me.
23 I have so many fond memories of Carole, from the time the
24 camper came unhooked off the truck on the way back from
25 Fryeburg, to many other family events, to even current times.

1 Jake has become my best friend. Carole was the best mother to
2 the two boys I have ever met. There is nothing she wouldn't
3 do for her family.

4 She even treated me just as I son. One particular time
5 comes to mind, me and Marshall had been working around the
6 clock doing snow removal, and she was good enough to put me up
7 on her couch, wash my clothes, and make us both a lunch.

8 I could fill page after page, but I don't want to take
9 all the court's time. Carole Swan is a good person, good
10 enough to have a Thanksgiving dinner for the town people that
11 didn't have one at the school.

12 I feel that people make mistakes in life, everybody does.
13 But Carole is a good person who has overcome many, many
14 obstacles that I don't think you have to be from this
15 courtroom, can understand or never will.

16 I'm very thankful that God sent me to know the Swans, and
17 I'll always be proud to call them my friends. Thank you.

18 THE COURT: Thank you, sir.

19 MR. SHARON: Wayne Libby.

20 THE WITNESS: My name is Wayne Libby. I have known
21 Carole Swan for over 30 years. In all of the occurrences that
22 I have had to meet with her regarding work or anything else,
23 she has always treated me fairly and honestly.

24 Probably 20 years ago I noticed a lot of bruises on her.
25 I did ask her about it and she told me she was clumsy, that

1 she had fallen. And it just goes to point out her character,
2 I think.

3 She was honest with me always. I'm not saying she never
4 disagreed with me. I have done some work for her, and she
5 thought my bill was too high, but she ended up paying it and
6 letting me know she disapproved of it.

7 I done some work for the town of Chelsea, and she was
8 aware of it. She was the one that had contacted me about it
9 regarding quantities of materials that the Town had been
10 billed for. She was very concerned as to whether it was
11 accurate or overbilling the Town.

12 And I just like to say that that's my opinion of her.
13 Thank you.

14 THE COURT: Thank you, sir.

15 MR. SHARON: Donna Williams, Your Honor.

16 THE WITNESS: Your Honor, my name is Donna Williams.
17 I am here in support of my friend, Carole Swan. We have been
18 friends for 20 years. Anyone reading the too many articles in
19 the press could assume Carole Swan is a very different person
20 than she truly is. I want to tell you about the woman who is
21 really Carole Swan. She is a mom, loving and nurturing. She
22 is a wife, faithful, and very loyal. She is a daughter, a
23 sister, an aunt, a pillar for her family. She is a
24 grandmother, proud and caring. She is a friend, supportive
25 and giving. She is a real person. She loves. She laughs.

1 She cries. She cooks. She shops. And she provides a home.
2 She is needed and loved by family and friends.

3 Thank you for listening.

4 THE COURT: Thank you very much, ma'am.

5 MR. SHARON: I have one last witness, Your Honor.

6 THE WITNESS: Hello, Your Honor. My name is Hilary
7 Belanger. I had written a letter that I believe you are
8 familiar with.

9 THE COURT: Yes, I read that.

10 THE WITNESS: To give you an idea of my credentials,
11 as you have heard from others, I am a mother. I also
12 graduated from Farmington in 2001 with a Bachelor of Science
13 in education, as well as psychology.

14 Part of what has driven me to know more of those
15 disciplines is to understand why my family has been through
16 the pain that they have and to try to break that cycle and
17 stop it from happening any further.

18 I have two children of my own and something that I have
19 learned from my aunt is the importance of self-confidence.
20 She instilled it in me at a young age because she felt that I
21 deserved better. I would hope that for my children that goal
22 of instilling self-confidence in them would allow them the
23 strength to be the best people that they can be, as well.

24 I believe that a very strong part of helping her is going
25 to be to restore some of her self-confidence to break this

1 cycle.

2 It is my hope that going forward from here that we can
3 realize all of these wonderful positive qualities that are
4 within her and that she can find the strength to realize them,
5 as well.

6 Thank you for hearing me.

7 THE COURT: Thank you.

8 MR. SHARON: Your Honor, there are other folks here,
9 some of whom have written letters, some who have not. They
10 are here in support but not need to be heard, Your Honor. I
11 think that their presence is sufficient to show the court
12 their support.

13 THE COURT: All right. Thank you. Mr. Sharon,
14 would you like to be heard yourself.

15 MR. SHARON: I would like my client to address the
16 court.

17 THE COURT: That's fine.

18 MR. SHARON: Thank you.

19 THE DEFENDANT: I am desperately sorry for all of
20 this. I never ever thought that I would hurt my family, my
21 community. I can't talk. I'm sorry.

22 MR. SHARON: May I have about a five-minute,
23 ten-minute recess, Your Honor?

24 THE COURT: Sure. We're going to take a recess.
25 You will let me know when you're ready, Mr. Sharon?

1 MR. SHARON: I will, Your Honor. Thank you.

2 (Whereupon court was recessed at 3:19 p.m. and
3 reconvened at 3:33 p.m.)

4 THE COURT: Mr. Sharon.

5 MR. SHARON: Yes, Your Honor.

6 THE DEFENDANT: I am desperately sorry for all my
7 mistakes. I want to accept responsibility. And I am the most
8 sorry for hurting my town who I love. I did not want to tear
9 my town apart. And I just want to say that I want everyone to
10 go forward. I want to pay my restitution. I want to pay my
11 fines, whatever it is so everyone can move forward. I am very
12 sorry to everyone that's been hurt. I am very sorry to take
13 your time on something that's so foolish over money. I'm
14 sorry for all of it.

15 THE COURT: Thank you.

16 Mr. Sharon.

17 MR. SHARON: Yes, Your Honor. Your Honor, I
18 believe -- I have read your comments in Marshall's sentencing
19 because I was -- I don't like to repeat what you already know,
20 but I think you -- as usual you hit the nail on the head.
21 This behavior divided the power right down the middle, into a
22 fault -- as you said, right at the fault line.

23 But as is common when there is a cataclysmic reaction
24 like this within the town, there is maximization and
25 minimization. And God bless my side of the fault line. I

1 think that one of the reasons why she sits here today is
2 because of some of the minimization of people's reaction to
3 what Carole did.

4 But it's really too easy to say that these folks on the
5 other side who vested her with the power -- I'm not saying the
6 people who voted her in, but the people that were only too
7 happy to call her up and say, go out and take a look at the
8 pothole. Go out and take a look at the road.

9 She wasn't forcing anybody into making her the de facto
10 road commissioner. They made her the road commissioner
11 because she was there. She was willing to do it. She was
12 happy to do it.

13 But what happened here? How can this occur? How can
14 both sides be right? Well, it's easy to find that both sides
15 are right because the people who see the good side of Carole
16 see her when it's not necessary for her to exert and deal with
17 unbridled power.

18 Judge Singal referred to in a sentencing of a podiatrist
19 I represented who abused his prescription powers, he referred
20 to the powers that are given certain people, judges, lawyers,
21 doctors, politicians as awful powers. Powers that are so
22 easily abused for profit, for greed, and for narcissism.

23 In this instance, Your Honor, Carole Swan for the first
24 time in her life when she was elected had some power, but
25 where would she learn to deal with that power? How did she

1 learn to deal with power from people who had power that was
2 unchecked? Her stepfather impregnates her and then tells her
3 to lie about it. So that's the first lesson she learns, when
4 there is power within an organization, within a family that
5 you abuse that power.

6 And what is the lesson that she learned from her husband?
7 The lesson on how you deal with power and how you deal with
8 problems and how you solve problems, you've heard it. You've
9 heard what happened. This is no excuse, but you are -- the
10 government on one side deals with the guidelines, which gives
11 a formalistic approach to the harm that has been caused to the
12 community.

13 But in sentencing a person, you have to help decide what
14 is the punishment necessary so when this does come to rest,
15 that this is a person that will no longer be a threat to the
16 community. Dr. Sadoff put it quite right when she said that
17 she is a work in progress. Imagine that, a woman of her age
18 being a work in progress, that finally understands what
19 brought her here.

20 I believe that the lessons that have been taught her and
21 the lessons that she absorbed and that she took into a
22 position of power where whenever there is an ability to choose
23 a right way and a wrong way, you take the easy way.

24 What need was there for this family to avoid paying
25 income taxes? Don Clark hit it right on the head. These

1 people didn't need to do that. They made money. They did
2 good work. They made money legitimately. This was not
3 stacking contracts. The city -- the town knew this. They
4 authorized it. They gave the contracts to Marshall Swan, and
5 he did a good job, and these people could have done quite well
6 off. She could have served this community -- she did good for
7 the community, there is no question about it. You have heard
8 of some -- from the people there is no question that she did
9 help the community.

10 But in the same time, when she was singularly unable to
11 deal with the power that was invested to her, she corrupted
12 that power, and she -- and when you take that into account
13 that -- you need to take into account the formalization of
14 what brings her, this human being into this court and the
15 lessons that have to be taught to a community and the lessons
16 that have to be taught to a family to be vigilant for this
17 abuse because abuse does -- as you can see, just doesn't
18 cause harm within the family, it causes harm outside the
19 family because sometimes people who are abused become abusers.
20 The puppeteers -- the puppets become the puppeteers.

21 This woman never had any power within her family. You
22 heard her testify. Much of what you didn't believe. Much of
23 what the jury didn't believe. But there is no question it was
24 abuse.

25 There is no question that she was injured at work. There

1 is not a question that she wasn't disabled. The question is
2 whether she was reporting her abilities. And, again, this is
3 the problem, when you can -- it would have been a very simple
4 matter for her to say those things as to what she was doing,
5 but she chose not to.

6 And what I am saying is that she was solely unequipped
7 based upon her upbringing, based on who she was, to deal with
8 the power of the elected official that she was given for
9 18 years and that the town invested in her. And this is what
10 happens sometimes when people who are unable to promulgate the
11 power, who don't have the moral compass to deal with that
12 power and don't have the moral compass to help you assist
13 someone, help them assist themselves in deciding what is right
14 and wrong, you choose the wrong path. This is a lesson that
15 has to be taught based upon the totality of the circumstances
16 of her life, that how you make the right choice based on
17 honesty and not convenience.

18 And I believe that this is one of the problems that
19 happened with this woman in this society, that she was not
20 given the power. She was not given the true support she needs
21 to deal with the awful power that was handed to her as an
22 elected official.

23 And I think you hit it right on the head, that arrogance
24 come from the unbridled use of power, and that's what happened
25 here. You said it best, that Marshall Swan and Carole Swan

1 appeared to have thought that they became the town of Chelsea
2 and what was good for them was good for the town of Chelsea.
3 And that sometimes isn't true.

4 So I ask you to look at all the letters and all the
5 people who believe her to be a good person, because she is a
6 good person to them, because she didn't have to use power.
7 She used her heart, and she has a good heart. But she is
8 never able to translate her heart into her moral compass. And
9 when she combines those two things after you determine what
10 punishment is needed under the totality of the sentencing
11 guidelines, under the advisory guidelines, under what the
12 government has said, when you look at the totality of that,
13 what has to somehow merge in the future is the heart of a good
14 person, but to have a moral compass that will help her make
15 decisions, not from her heart, but from an honest human being
16 who was taught that power must be wielded and power must be
17 used sparingly. And before you can take that power and before
18 you even accept the awful powers that are given you, you must
19 be darn sure that you have the compass and you have the
20 strength to deal with that. And I think that that is what is
21 going to have to happen in the future, that she be given the
22 strength through counseling, through -- I think an education
23 has been given to people on her side that they have to watch
24 out for her, they have to be vigilant to what is going on in
25 her house, and they can't just slough it off, as poor Carole

1 is injured and poor Carole is being abused. They have to be
2 vigilant that these can corrupt -- this kind of abuse can
3 corrupt a person as much as injure them.

4 And when you look at that, please look at the totality of
5 this and then look at what she has done and how she has hurt
6 the community and balance those two things and determine what
7 is going to happen when the dust settles here and all payments
8 are made, all fines are paid, and she comes back out into
9 society, hopefully, a whole person who can deal in society and
10 be a family person and be a member of the community.

11 Her reputation, her husband's reputation are gone, and
12 rightfully so. I mean, you don't -- when you -- the people --
13 you have clay feet in this instance, and you can't complain
14 about it.

15 Mr. Monroe's reputation was solid, no question about it.
16 He didn't deserve that. These people's reputations were taken
17 out by themselves because they were wholly incapable of
18 dealing with the power that was given to them. But taking all
19 that into account, I would just ask you to balance the
20 sentence of her husband, balance what she has done, and
21 balance the problems she had in her life and you determine
22 what is necessary to express the harm that she's done, as well
23 as taking into account that the harm that has been done to her
24 and her upbringing. Thank you. I know it's a difficult task.
25 I'm not saying it's easy, and I know it's made more difficult

1 by the trial, and I appreciate all that. I appreciate the
2 patience and I'd just ask you to use the awful powers that are
3 given you and look -- because it is complex and it's not quite
4 as black and white as the government would like to make it out
5 to be.

6 THE COURT: All right. Thank you very much,
7 Mr. Sharon. I appreciate your comments. Anything further
8 from -- Mr. Sharon, anything further?

9 MR. SHARON: No, I am all set, Judge.

10 THE COURT: Anything further, Mr. Clark?

11 MR. CLARK: Briefly, Your Honor, three quick points.
12 Marshall Swan never did admit that he abused his wife to the
13 extent she testified to or claims that he did. He publically
14 denied doing that.

15 Your Honor, you cannot believe a single word that Carole
16 Swan speaks. When her lips are moving, she is lying. And I
17 do not believe that anything that she represented to anyone in
18 this case as contained in the exhibits before the court.

19 And finally, Carole Swan wasn't given power by the town
20 of Chelsea. She took it. She took it by having town managers
21 fired one after another so that she was the only one that
22 could control that road budget. I say that very briefly.

23 In addition, Your Honor, I am sure you are going to ask,
24 but there are some victims, real victims. Carole Swan is not
25 the victim. There are real victims in this courtroom who

1 would like to address the court.

2 THE COURT: Certainly. You may proceed.

3 MR. CLARK: For the town of Chelsea, Your Honor,
4 Mr. Danforth I believe is a current elected selectman.

5 THE WITNESS: Richard Danforth, selectman for the
6 town of Chelsea. Honorable Judge Woodcock, the actions of
7 Mrs. Swan have greatly affected me and the town I live in. I
8 was not aware of how much her actions affected me until the
9 trial was over. Since she committed these crimes, neighbor
10 has pitted against neighbor, friend against friend. This
11 ordeal has constantly been on my mind, affecting both my home
12 life and work. Now that the final step is almost complete, I
13 take solace that justice will be served and the healing
14 process will continue.

15 It is difficult to ascertain how deep or involved her
16 deceit really was. The crimes she committed are severe, but
17 what disturbs me the most is, as public officials, we are
18 expected and should be held to a higher standard. If we do
19 not abide by a code of ethics, our whole system fails. We are
20 supposed to put our personal gains aside and serve, to the
21 best of our ability, the people who elected us.

22 She broke that bond of trust. The fact that she refused
23 to resign her selectman position upon her arrest, causing the
24 town to incur extra legal fees is an example of the arrogance
25 she possessed.

1 I thoroughly enjoy being a selectman for my town.
2 Mrs. Swan's action cast a cloud over my credibility and the
3 ability to serve as selectman. My joy in serving on the board
4 of selectmen is now tempered, but I do appreciate the chance
5 to once again serve my community.

6 While I and others may have an opinion on the terms of
7 Mrs. Swan's sentencing, I am putting my trust in the process.
8 The only thing I can hope for is to happen is that a message
9 will be heard to all elected officials. We are elected to
10 serve the people, not serve ourselves.

11 THE COURT: Thank you, sir.

12 MR. CLARK: Frank Monroe, Your Honor.

13 THE WITNESS: Frank Monroe. Good day, Judge
14 Woodcock.

15 THE COURT: Afternoon.

16 THE WITNESS: I have listened to a lot of testimony
17 through all three trials. Some of this that's been said today
18 about her is -- is heart-touching, is true, probably to a
19 point. I have known them kids of hers since they was probably
20 six or eight years old. They come down to my shop. I would
21 make of them. My father would make of them.

22 I don't know what went on in their house. I have only
23 heard. Okay. It's sad that this has happened.

24 But being as a parent, this crime that she has committed
25 against me, my business, how it's affected me, it has tore my

1 family apart. Needless to say, how do you explain to your
2 seven year old son, you get ready to go to church, your tires
3 are flat. Carole Swan may not have done that act, but I was
4 here and I heard the testimony that she was present at some of
5 them conversations. That being said, okay, being the person
6 that she said she is and that people say she is, why didn't
7 she say -- because she knew them people -- don't do that,
8 that's wrong? Don't go to Frank Monroe's. We're going to do
9 this the right way.

10 But it didn't happen. There was no remorse. I have seen
11 no remorse, and I am speaking to the court, nobody else. I
12 haven't seen it. But my family has suffered. It isn't about
13 the dollar amount. The dollar amount here is -- is ludicrous.

14 Two families that I know of are destroyed because of it,
15 because of this crime. Some of this crime could have been
16 avoided, I believe, on the behalf of the way the town
17 operated, you know, but Carole did take that power. She did
18 use that power. She used it against me. She used it against
19 a lot of people.

20 Okay. That is all fine and it's all been proven. It's
21 not fine, but in a matter of speaking. But it does bother me
22 how this has affected my son. We had to have cameras put in
23 in my house from FBI, they put them in. How do you explain to
24 your son? He shouldn't have to live under cameras. That was
25 before we learned of who the people was that did the damage.

1 You know, that's all intimidation. You know, that stuck in
2 his head. He won't sleep in his own room alone. He has to
3 sleep with one of his step-brothers to say -- that are like
4 his step-brothers or me for two years, okay, his mother --
5 that issue had developed and she moved out through all this,
6 it was him and I.

7 Okay. He has issues, not mental issues, but he has trust
8 issues to the fact that if he sees a car down to my garage,
9 okay, he says, want me to get the shotgun? He shouldn't have
10 to. He's 10. He shouldn't have to be that way. He only has
11 this intimidation factor installed in him because of their
12 actions, that Carole Swan did and Marshall Swan did.

13 I kept my mouth shut because of my choice and because of
14 the federal government for three years. I have waited for
15 this opportunity to speak. I didn't even tell you -- read
16 what was on here because I didn't like it, and I went over it
17 with my lawyer and I don't think it says what it needs to say.
18 What I have said today, I meant. And I hope that this court
19 as bad as it hurts, times her -- gives her the most stiff
20 sentence they can because my family was ripped apart because
21 of her. Now it's her family's turn. Thank you.

22 THE COURT: Thank you, Mr. Monroe.

23 MR. CLARK: Nothing further, Your Honor.

24 THE COURT: Thank you.

25 Anything further, Mr. Sharon?

1 MR. SHARON: No, Your Honor.

2 THE COURT: I will see probation briefly at sidebar
3 here.

4 (Whereupon there was a meeting held at sidebar off
5 the record.)

6 THE COURT: The court has carefully reviewed the
7 contents of the written presentence investigation report and
8 takes those contents into account in determining sentence.
9 The court has considered what it has heard from counsel in the
10 course of these proceedings and at the presentence conference,
11 the evidence presented at this hearing, including the contents
12 of the allocution of this defendant. There are no further
13 disputed matters. The court has already made its guideline
14 calculations.

15 I have taken into consideration each of the factors set
16 forth in 18 U.S.C. Section 3553(a), including the obligation
17 to impose a sentence that is sufficient but no greater than
18 necessary to achieve the purposes of the law.

19 Although, I have taken into account each of the statutory
20 factors, I have concentrated on the history and
21 characteristics of the defendant, the nature and circumstances
22 of the offenses, the need to reflect the seriousness of the
23 offenses, to promote respect for the law, and to provide just
24 punishment for the offenses.

25 Finally, I have considered the need to provide proper

1 restitution to any victims.

2 I have started with the recalculated guideline range of
3 70 to 87 months, which is advisory.

4 Turning to the history and characteristics of the
5 defendant. The defendant is a 56-year old resident of
6 Chelsea, Maine. She was born in Gardiner, Maine. Her father,
7 George Blodgett, and her mother, Patricia Blodgett -- her
8 mother has spoken here today -- were divorced when the
9 defendant was eight years old.

10 Although the presentence report states that the defendant
11 had no relationship with her father after the divorce, the
12 defendant's sentencing memorandum indicates that she
13 maintained some contact after the divorce, but that the
14 contact gradually lessened. Tragically, the defendant's
15 father died of a self-inflicted shotgun wound in 2004.

16 The defendant's mother remarried a man named Earl
17 McLaughlin, who became the defendant's substitute father
18 figure. She and her older sister, Sharon, from whom we have
19 heard today, and her brother, George, who goes by the name
20 Lee, lived with their mother and Mr. McLaughlin.

21 The defendant has a younger, half-sister, Kelley, from
22 her mother's marriage to Mr. McLaughlin.

23 Unfortunately, Mr. McLaughlin was an alcoholic.
24 Initially, he beat their mother, and the children were scared
25 of him. When the defendant was in the six-grade,

1 Mr. McLaughlin stopped drinking, but her mother was
2 preoccupied with keeping him sober, and she spent almost all
3 of her time and energy with him. This left the household
4 chores to the children. Carole spent much of her time working
5 around projects around the house and taking care of the
6 younger kids. She also developed a stuttering problem, we
7 have heard about that, which later improved with therapy, but
8 she did not do well in school.

9 In 1972 she started high school and things began well.
10 She had a boyfriend and she had fun with him on the weekends.
11 However, during her sophomore year, Mr. McLaughlin began
12 sexually abusing her. Ultimately, as we have heard, she
13 became pregnant with her stepfather's child. She was told to
14 get an abortion and to tell people that it was her boyfriend's
15 child. Her boyfriend broke up with her as a result, and even
16 after the pregnancy was terminated the molestation continued.

17 Mr. McLaughlin died a number of years ago. It was in her
18 senior year that the defendant met Marshall Swan. The
19 defendant moved in with him in 1979, and they were married in
20 1985. They have two sons, Jake, who is 28-year old, and John,
21 who spoke today, who is 18.

22 At both trials, the defendant testified at some length
23 about Marshall's controlling and abusive conduct towards her.
24 The defendant graduated from Gardiner High School in 1976. At
25 some point, the defendant got a job working for the postal

1 service, and she sustained a work injury to her right
2 shoulder, ultimately leaving work. She was approved for and
3 received workers' compensation disability benefits.
4 Meanwhile, her husband, who is by all accounts, an extremely
5 hard working and competent contractor. He began to experience
6 substantial success in his contracting business, Marshall Swan
7 Construction.

8 The defendant was the office person for his business,
9 answering the phone, preparing invoices, receiving payments,
10 and doing the books. The defendant at some point also became
11 involved in a horse racing business.

12 During the period from 2003 to 2013, she received
13 disability benefits at the end totaling about \$44,000 a year.

14 The defendant has some physical problems. In 2008 she
15 underwent a gastric bypass and is currently diagnosed with
16 fibromyalgia, occipital neuralgia, right shoulder sympathetic
17 mediated pain syndrome, and right sacroiliac joint
18 dysfunction. She takes about five medications daily.

19 More recently based on the -- an interview with a
20 psychologist, she was diagnosed with PTSD and depression, and
21 she is receiving two psychotropic medications per day.

22 She was first elected to the board of selectmen for the
23 town of Chelsea in 1992 and was consistently reelected until
24 she resigned in 2011 as a result of the police investigation.

25 She turned out to be -- and this is an understatement --

1 a force to be reckoned with on the board of selectmen. During
2 her early years, she uncovered some fraud by one of the town
3 employees. She was in the words of her attorney, Robert
4 Stolt, tenacious. And she pursued that issue against the town
5 employee despite fierce blow-back from a number of people in
6 the town. She was ultimately proven right and received
7 recognition from her fellow citizens.

8 In her memorandum, the defendant has set forth her
9 history of good works for the town of Chelsea, which the court
10 accepts. And the court has received 14 letters that friends
11 and family have written to the court concerning her character
12 and the medical records that the defendant has presented. The
13 court has also listened carefully to the statements of support
14 today for Ms. Swan.

15 Turning to the nature and circumstances of the offense,
16 under a superseding indictment, the defendant was charged with
17 three counts of Hobbs Act extortion, five counts of false tax
18 returns, four counts of false statements to obtain workers'
19 compensation, one count of fraud against a local government.

20 Her husband, Marshall Swan, was also indicted for tax
21 fraud and local government fraud.

22 The entire case was scheduled to go to trial against both
23 defendants on July 8, 2013. However, on July 1, 2013, the
24 defendant filed a trial brief that asserted that she had acted
25 because of her fear and lack of control from spousal abuse.

1 Marshall Swan, reviewing that memorandum, move to sever his
2 case from hers and the court granted that motion, concluding
3 that he should not have to defend himself against both the
4 government's and his wife's charges at the same time.

5 The defendant also earlier moved to sever the extortion
6 charge from the federal -- and the federal program charge from
7 the tax fraud and workers' compensation charge. She said she
8 wanted to testify only on the extortion charge and not on the
9 others. The court granted the severance on that basis,
10 severing the extortion charge from the other charges.

11 The first trial on the tax fraud and workers'
12 compensation fraud and government fraud charges went forward
13 on July 8, 2013. On July 26, 2013, a federal jury convicted
14 the defendant of all 5 tax fraud counts from the tax years
15 2006 through to 2010. The jury found the defendant guilty on
16 two counts of false statements in connection with the workers'
17 compensation fraud, and not guilty on the remaining two counts
18 of workers' compensation fraud. Finally, the jury found the
19 defendant not guilty of the federal program fraud.

20 Despite her earlier expressed desire not to testify, the
21 defendant actually took the stand and testified at the July
22 trial.

23 A second trial was held from September 10, 2013, to
24 September 17, 2013. The defendant testified at that trial.
25 The jury found the defendant guilty of all three counts of

1 Hobbs Act extortion.

2 The defendant's convictions, therefore, fit into three
3 different categories. The tax fraud counts are
4 self-explanatory, the government proved beyond a reasonable
5 doubt that the defendant and her husband failed to report
6 \$648,573.78 in income from tax years 2006 through 2010. This
7 resulted in an underpayment of taxes in the amount of
8 \$145,404.

9 The workers' compensation fraud counts reflect the
10 defendant failed to inform the office of workers' compensation
11 programs about the work she had been doing for the town and
12 for Marshall Swan Construction, that she exaggerated the
13 nature and severity of her disability, and failed to report
14 the money she had extorted from Frank Monroe.

15 The Frank Monroe extortion is a complicated tale, but it
16 boils down to the defendant demanding and receiving from a
17 local contractor, Frank Monroe, who has been here in the court
18 today, and who spoke to the court, in exchange for influencing
19 the town of Chelsea to contract with him two payments, one of
20 \$3,000 and another of \$7,000 fall into that category. The
21 third payment is different and more, in the court's view,
22 egregious. The defendant told Mr. Monroe to bill the town for
23 sand he had not delivered and demanded \$10,000. Mr. Monroe
24 had capitulated, I think to his regret, to her earlier demands
25 for kickbacks, but he could not bring himself to bill the town

1 for phantom sand. He went to the police. And the police then
2 set up a sting. They listened to her on wire taps, and they
3 watched as he tossed a bag that the defendant thought had
4 around \$10,000 in it into her motor vehicle. She was brought
5 to the county sheriff's office and essentially at the county
6 sheriff's office confessed to that crime.

7 The court has also considered the seriousness of the
8 offense, the need to promote respect for the law, and to
9 provide just compensation. It is striking, particularly as a
10 long-term member of the board of selectmen of the town of
11 Chelsea, that all her crimes involve cheating the government,
12 the tax fraud, workers' compensation fraud, and extortion.
13 The court has considered that these crimes took place over
14 many years, that the defendant had full opportunity to
15 reconsider and did not, did not self-report, and she stopped
16 only because she was caught.

17 The court has considered that the money is substantial,
18 underreporting \$648,000 is, for most Maine people, a small
19 fortune. And during that time, she received at least \$100,000
20 more from workers' compensation fraud. And as we have heard,
21 \$10,000 more from Frank Monroe, a sum that was going to be
22 another \$10,000. And during all this time, as has been
23 pointed out, the defendant was an elected town official and
24 owed and breached a primary duty of honesty to the citizens
25 who elected her to her position. She also had a duty of

1 trust, which she breached in her dealings with Frank Monroe.

2 I do want to talk for a moment, Ms. Swan, about the issue
3 that Mr. Clark has brought up, and that concerns your
4 testimony. Essentially what you should know is I have sat
5 through a lot of your testimony, and Mr. Clark describes you
6 as somebody who is virtually a pathological liar. I have to
7 tell you that I agree with him.

8 I have to tell you, Ms. Swan, that you are one of the
9 least credible witnesses I have ever seen in any court, both
10 during the long period that I practiced law and during the
11 period that I have been a judge. You lied, in my view,
12 repeatedly on matters, big and small during the course of the
13 two trials before a federal jury.

14 I would point out that, unlike your husband, who did not
15 take the stand, you had a perfect right and you could have
16 simply put the government to its proof and remain seated, and
17 Mr. Sharon, who is a fine lawyer, could have tested the
18 government's case, but you chose to do something else.

19 You chose in two trials to take the stand, to swear to
20 tell the truth, and once you did that, you were duty-bound and
21 legally bound to tell the truth, and yet you lied.

22 I also want to tell you my impressions of you, Ms. Swan.
23 I agree with Mr. Sharon that you are an unusually complicated
24 person. And determining the correct sentence to impose upon
25 you is not an easy task because I am sympathetic to much of

1 your life story. You did not have an easy time growing up,
2 particularly after your mother's remarriage. I am very sorry
3 to learn that you had been sexually abused by your stepfather
4 as a teenager and when that happened, you were not supported
5 by your mother. It sounds like when you were a child, you
6 were made to work very, very hard, which is not a bad thing in
7 and of itself, but it seemed that from the presentence report
8 and the information your lawyer has provided, that your mother
9 and stepfather squeezed the joy out of childhood for you.

10 And you and Marshall, I think to your credit, built up a
11 very successful business. And that was by dint of hard work.
12 And I credit, not simply Marshall with that, but also with
13 you. I credit you with that. Neither of you came from any
14 significant wealth, and you achieved much of your wealth, but
15 not all of it, because you worked hard for it.

16 I also acknowledge that your work on the board of
17 selectmen had an extremely seamy side, which we will talk
18 about, but I have no doubt that over the course of the whole
19 19 years while you were working on the board of selectman,
20 that you did a fair amount of good for the town of Chelsea.
21 Your investigation into the financial fraud of the town clerk
22 is an example of that, but it didn't stop with that. From the
23 testimony of everybody who came before the court, there was
24 not much that happened in the municipal affairs of the town of
25 Chelsea that escaped your watchful eye. Incidentally, your

1 ability to watch carefully the budget of the town of Chelsea,
2 to haunt the contractors from the town of Chelsea, to make
3 sure that the nickles and dimes were properly being spent for
4 the town of Chelsea is one of the reasons that, I think, that
5 you fully and intentionally failed to pay in full your income
6 taxes. It's inconceivable to me, Ms. Swan, that you were so
7 careful for the municipal affairs that you didn't know what
8 you were doing and misrepresenting as much as 50 percent of
9 your income in given years to the United States government.

10 I also accept your description of your marriage with
11 Marshall and his controlling and abusive conduct. I am sorry
12 you had to go through that. I listened not only to your
13 testimony, but also your sons' testimony. I don't think that
14 they were lying. I think they were telling the truth on that.
15 And I do agree that when you testified about Marshall's
16 actions within your marriage, you were telling me the truth
17 and you were telling the jury the truth.

18 I have ordered, as you know, because you were at his
19 sentencing, your husband to undergo batterer's counseling.
20 And I am going to order you to undergo mental health
21 counseling. And I hope that both you and he will begin to
22 understand this awful phenomenon and learn how to avoid it and
23 deal with it.

24 It strikes me that your lawyer, Mr. Sharon, was exactly
25 correct in saying that in some ways your life story explains

1 why you're here today because part of your life has always
2 been controlled either by your mother or stepfather or by your
3 husband. And when you were elected to the board of selectmen
4 for the town of Chelsea, you began to realize for the very
5 first time in your life that you could exert control over
6 others, and you misused that public trust.

7 There is a saying in Africa that every small boy needs a
8 small boy. And I think for you Frank Monroe and other members
9 of the town of Chelsea were your small boys, that you were --
10 you found that you could push them around, and you enjoyed it.
11 I also think for whatever reason that you have come to have an
12 extremely strong sense of entitlement simply because of who
13 you were and what you and your husband had achieved that the
14 rules that apply to everyone else did not apply to Carole
15 Swan. But what you should know, under no uncertain terms, is
16 this, whatever happened to you and whatever you achieved, did
17 not give you the right to commit crimes.

18 And here I have found watching you throughout many, many
19 days that you present a very striking and unusual combination
20 of self-pity and aggressiveness. I've watched you cry on the
21 stand. I watched you cry today. I have also watched you look
22 at people, including specifically Frank Monroe, with a look
23 that is so steely and so hard and so hateful that if looks
24 could kill, he would not be here today. I have also watched
25 you, as I have said repeatedly, willfully and deliberately lie

1 on the stand.

2 I want to tell you, because I think the people of this --
3 in this courtroom and the people of Chelsea ought to know it,
4 is that regarding Frank Monroe, I agree with what -- with much
5 of what Mr. Clark said about Frank Monroe. The contracting
6 business is a tough business. If you have heavy equipment in
7 their yard, it has to be used because you have to pay for it.
8 And you know that because you were Marshall Swan Contracting &
9 Construction's bookkeeper and you knew it. And what you know
10 is the economic imperative haunts a contractor. And because
11 of that, because you knew the bank would not wait for Frank
12 Monroe to get the next job, you knew he was vulnerable. And
13 you picked your target. And you went after it.

14 Now, Frank Monroe is willing to go only so far. And I
15 think among the most shocking episodes of this entire sorry
16 affair when he reported your crime to the police, you savaged
17 him. I sat here in the courtroom and I listened to witness
18 after witness come forward and testify that Frank Monroe is a
19 liar, that Frank Monroe has a bad reputation. And you allowed
20 your attorney to call one after another of these witnesses to
21 testify against Frank Monroe when you knew in your heart of
22 hearts, Ms. Swan, that he was telling the truth.

23 The irony in this case is that Frank Monroe turned out to
24 be to you what you were to the town clerk when you first came
25 to power in the town of Chelsea. And I will say unequivocally

1 to the people in this town, whether you're on one side or the
2 other of this sorry affair, that Frank Monroe is a local hero
3 because he went to the police when he had to go to the police.
4 He was not intimidated by the fact that people slashed his
5 tires and broke the windows in his equipment. He stood the
6 course. He testified in this case against the hateful looks
7 that you were shooting across the courtroom at him and he did
8 what honest and good citizens do. He made sure that justice
9 was done. And for you to have treated him as you did, speaks
10 poorly, Ms. Swan, for you.

11 I will make two final points. One point is that no one
12 is required to run for public office. You take a public
13 office because you were voted into public office by your
14 fellow citizens, and you owe them a duty of honesty. And you
15 breached that duty. And when you, as a member of the board of
16 selectmen for the town of Chelsea breach a duty of that sort
17 and do so repeatedly, you bring into question for all of our
18 citizens, the honesty of their government.

19 I agree with Mr. Danforth that elected officials owe a
20 higher duty than your average citizen, and you breached that
21 duty.

22 Finally, you've done a terrible amount of damage to the
23 town that you say you love so well. This courtroom with its
24 wide center aisle is symbolic of the town of Chelsea. You
25 could line the people up in the town of Chelsea and there

1 would be a pro Carole fashion and anti Carole fashion.

2 Your convictions, Ms. Swan, have confirmed the worst
3 beliefs about you of some. And they have dashed the faith of
4 your supporters.

5 What I suggest you need to do is to recognize the harm
6 you've caused to your community. And the first step, which I
7 did not hear you say today, is to call off the dogs on Frank
8 Monroe. It seems to me that this town, the town that you have
9 spent most of your adult life in, needs to heal. And unless
10 you stand up and tell the people who believe in you that it's
11 time to move on, they are going to remain angry, disappointed
12 at their fellow citizens. You, Ms. Swan, are the person who
13 can heal the town and I am going to ask you do that, but you
14 can only do so once you finally have recognized that it is
15 you, not anyone else, who is responsible for the crimes you've
16 committed.

17 What I am going to do in terms of the sentence I am
18 imposing today is as follows, I am going to order restitution.
19 That is mandatory under the law. If you have committed a
20 crime and you've caused someone to be a victim of the crime,
21 the law requires restitution. The restitution I am going to
22 order in accordance with the findings I made earlier today are
23 \$25,000 to Frank Monroe, \$4,000 to the town of Chelsea,
24 \$75,000 to the Department of Labor.

25 I am required to impose a special assessment of a

1 thousand dollars, I will do that.

2 In terms of supervised release, I am going to place you
3 on supervised release after you get out of jail. I am going
4 to require that you comply with the terms of supervised
5 release. As I have mentioned to you, I think that you need to
6 continue with your mental health treatment. I'm going to
7 order that you do so.

8 I am going to require that you come clean on your
9 financial affairs. I've heard today for the very first time
10 that you have misrepresented things to the probation officer
11 concerning the property that you own and the value of that
12 property. And had Mr. Clark not investigated it and had the
13 officers, the federal officers we heard from today not
14 thoroughly investigated this matter, I would have walked away
15 with a misimpression based on your continuing the lies that
16 you had only \$5,000 in assets. That's false. It's very clear
17 from the evidence that Mr. Clark presented today that you have
18 substantial assets with which to pay a fine.

19 And I would like to thank you Mr. Clark and the officers
20 for thoroughly investigating this case in general and also for
21 ferreting out the fact that the defendant herself had
22 misrepresented to the probation officer the extent of her
23 assets.

24 I will tell you, Ms. Swan, that it is astonishing to me,
25 that having been convicted of two crimes that you would

1 continue to lie and hide your assets in the hope that you
2 would continue to avoid justice.

3 I am going to fine you, based on what I have heard today,
4 the very top of the fine range of \$125,000.

5 In terms of the amount of time you are going to spend in
6 prison, I have considered all the factors that Mr. Clark has
7 mentioned and that your lawyer, Mr. Sharon, has mentioned and
8 in balancing those factors I am placing you in jail for a
9 total period of time of 87-months, which is the highest end of
10 the guideline range applicable to your case.

11 You will stands for the imposition of sentence. The
12 defendant is hereby committed to the custody of the United
13 States Bureau of Prisons to be imprisoned for a total term of
14 87 months on each of counts 1 through 3 to be served
15 concurrently; 36 months on each of counts 4 through 8 to be
16 served concurrently; and 60 months on each of counts 9 and 11
17 to be served concurrently.

18 The court recommends to the Bureau of Prisons that the
19 defendant be placed in a Bureau of Prisons facility that can
20 address her medical needs.

21 Upon release from imprisonment, the defendant shall be on
22 supervised release for a term of 3 years on each of counts 1
23 through 3, 9 and 11 to be served concurrently and 1 year on
24 each of counts 4 through 8 to be served concurrently.

25 The defendant shall report to the probation office in the

1 district to which the defendant is released within 72 hours of
2 release from the custody of the Bureau of Prisons.

3 The defendant shall not commit another federal, state, or
4 local crime. The defendant shall not illegally possess a
5 controlled substance. The defendant shall cooperate in the
6 collection of DNA as directed by the probation officer. The
7 defendant shall not possess a firearm, ammunition, destructive
8 device, or any other dangerous weapon.

9 This judgment imposes both a fine and a restitution
10 obligation. And it shall be a condition of supervised release
11 that the defendant pay any such fine and restitution that
12 remains unpaid at the commencement of the term of supervised
13 release in accordance with the schedule of payments set forth
14 in the criminal monetary penalty sheet of this judgment.

15 The defendant shall comply with the standard conditions
16 that have been adopted by this court. The defendant shall
17 also comply with the following additional conditions, one, the
18 defendant shall provide the supervising officer any requested
19 financial information. Two, the defendant shall report to the
20 supervising officer any financial gains, including income tax
21 refunds, lottery winnings, inheritances, and judgments,
22 whether expected or unexpected. The defendant shall apply
23 them to any outstanding court ordered financial obligations.
24 Three, the defendant shall not incur new credit charges or
25 open additional lines of credit without the supervising

1 officer's advance approval. Four, the defendant shall
2 participate in mental health treatment as directed by the
3 supervising officer until released from the program by the
4 supervising officer. The defendant shall pay or co-pay for
5 services during such treatment to the supervising officers
6 satisfaction; five, the defendant shall not use or possess any
7 controlled substances, alcohol or other intoxicant, and shall
8 participate in a program of drug and alcohol abuse therapy to
9 the satisfaction of the supervising officer. This shall
10 include testing to determine if the defendant has used drugs
11 or intoxicants. The defendant shall submit to one test within
12 15 days of her release from prison and at least 2, but not
13 more than 120 tests per calendar year thereafter as directed
14 by the supervising officer. The defendant shall pay or co-pay
15 for services during such treatment to the supervising
16 officer's satisfaction. The defendant shall not obstruct or
17 tamper or try to obstruct or tamper in any way with any tests.
18 Six, the defendant shall satisfy all tax liabilities to the
19 Internal Revenue Service and comply with any tax repayment
20 schedule established by the IRS. Seven, the defendant shall
21 report to the IRS and file true and accurate returns for tax
22 years 2006 through 2010 within 30 days of release from
23 incarceration or as otherwise directed by the supervising
24 officer. A criminal monetary penalty is assessed on counts 1,
25 2, 3, 4, 5, 6, 7, 8, 9, and 11 in the total amount of \$1,000

1 at \$100 per count.

2 The court imposes a fine in the amount of \$125,000. The
3 court finds the defendant does not have the ability to pay
4 interest on the fine and the interest requirement is waived.

5 The court orders restitution on count 1 in the amount of
6 \$3,000, on count 2 in the amount of \$11,860, and on count 3 in
7 the amount of \$15,721.66. The court orders restitution on
8 count 9 in the amount of 31,000 -- of \$41,469.59, and on
9 count 11 in the amount of \$34,295.69, for a total of
10 \$106,346.94.

11 The court finds -- the court orders the defendant to make
12 restitution to the following payees in the amounts listed
13 below. If the defendant makes a partial payment, each payee
14 shall receive an approximately proportional payment, unless
15 specified otherwise in the priority order or percentage
16 payment column -- percentage payment column below. Victim
17 name, Frank Monroe at 183 Augusta Road, Whitefield, Maine,
18 04353 in the amount of \$25,721. To the town of Chelsea,
19 Maine, 560 Togus Road, Chelsea, Maine, 04330-1272, in the
20 amount of \$4,860. The United States Department of Labor,
21 OWCP, P.O. Box 37117, Washington D.C., 2003-7117, attention
22 PCC, in the amount of \$75,765.28.

23 The court finds the defendant does not have the ability
24 to pay interest on the restitution, and the interest
25 requirement is waived.

1 The payment shall be applied in the following order, one
2 to the assessment, two to the restitution, and three to the
3 fine principal.

4 Payment of the total fine and other criminal monetary
5 penalties shall be due in full immediately. Any amount the
6 defendant is unable to pay now is due and payable during the
7 term of incarceration. Upon release from incarceration, any
8 remaining balance shall be paid in monthly installments to be
9 initially determined in amount by the supervising officer.
10 Said payments are to be made during the period of supervised
11 release, subject always to review by the sentencing judge on
12 request by either the defendant or the government.

13 Is there any objection to the terms of supervised release
14 on the part of the defendant?

15 MR. SHARON: No, sir.

16 THE COURT: Ms. Swan, I must advise you, you have a
17 right to appeal these convictions and sentence. If you wish
18 to do so, in order to effectively exercise that right of
19 appeal, you must cause to be filed with the clerk of this
20 court within 14 days of today, and not thereafter, a written
21 notice of appeal. Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I advise you if you fail to timely file
24 the written notice of appeal, you have given up your right to
25 appeal this sentence and your convictions. Do you understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: If you cannot afford to file the appeal,
3 you can appeal without cost to you. And on your request, the
4 clerk will immediately prepare and file a notice of appeal on
5 your behalf. Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: Is there anything further to come before
8 the court at this time from the government?

9 MR. CLARK: No, Your Honor.

10 THE COURT: Anything on the part of the -- did I
11 miss something? Oh, the count -- the court imposes the fine
12 on count 1.

13 Anything further from the defendant?

14 MR. SHARON: No, Your Honor.

15 THE COURT: What do you want to do about -- is she
16 ready to go to prison today?

17 MR. SHARON: Well, I suspect based on what -- the
18 prior sentence, she is ready, and I will leave that up to your
19 discretion.

20 THE COURT: Right. Well, let me explain where I am
21 on that.

22 MR. SHARON: Yes, Your Honor.

23 THE COURT: The reason that I had Marshall Swan go
24 immediately to prison is because I made a finding that he
25 intimidated Frank Monroe.

1 MR. SHARON: Yes, Your Honor.

2 THE COURT: And I thought that he needed to be
3 brought up -- brought up short --

4 MR. SHARON: Yes, Your Honor.

5 THE COURT: -- because what he had done went right
6 to the very heart of the judicial system.

7 MR. SHARON: I think in my client's benefit, it
8 would be -- it more -- it would be better for her if you would
9 allow her to self-report.

10 MR. CLARK: We object to that, Your Honor.

11 THE COURT: All right. On what basis?

12 MR. CLARK: Under the statute, 8 U.S.C. 3143, a
13 defendant who has been sentenced shall be detained unless
14 the -- shall be detained. There is no appeal here. There is
15 no petition for writ of certiorari. And there is certainly no
16 extenuating circumstances, which would make it under the
17 appeal provision of 3145 --

18 THE COURT: Yeah, but I don't --

19 MR. CLARK: -- clearly shown that there are
20 exceptional reasons why her detention would not be
21 appropriate.

22 MR. SHARON: Yes, I don't think that's the standard.
23 We're not asking for any appellate law on that.

24 The only reason I bring in, Your Honor, is that I think
25 the court's aware of the shuffling that has to go on once you

1 are assigned, and I think that, in all respect, for her health
2 would allow -- be better served if she could report. I think
3 that at least the reports that I have given you from
4 Mr. Bussert, who indicates that she may be going all the way
5 to Texas because that is the only women's facility. So I
6 think it would be more beneficial, given your discretion, to
7 allow her to self-report.

8 THE COURT: All right.

9 MR. CLARK: I do believe that Frank Monroe is still
10 a person who is a victim of this defendant and still faces
11 retaliation, and if this defendant is released we fear for his
12 safety.

13 THE COURT: All right. I understand your concerns,
14 Mr. Clark, I understand that very well.

15 Let me first explain to you, Ms. Swan, what your choices
16 are. You can -- if I do let you out today, you will be on
17 bail. You will be on bail under the same terms and conditions
18 as I previously imposed.

19 THE DEFENDANT: Okay.

20 THE COURT: Now, I can tell you unequivocally, that
21 if you're out on bail and if I hear one word that you're going
22 after Frank Monroe, even Mr. Sharon is not going to be able to
23 convince me that you don't immediately go to jail. Do you
24 understand what I have said?

25 THE DEFENDANT: Yes, I do, sir.

1 THE COURT: The other thing you have to understand
2 is this, I don't know -- my job is done when I sentence you.
3 I can make recommendations to the Bureau of Prisons, but it's
4 up to the Bureau of Prisons is the one that decides where you
5 end up in prison.

6 I think Mr. Sharon may well be right that you will -- you
7 may be, and I don't know, I don't control it, you may end up
8 in Texas. If you are assigned to Texas, you can get a free
9 ride today. They will take you down. But what happens is it
10 goes through the process and you get designated and you will
11 be alerted to where you're supposed to report.

12 And I will not hear you tell me you can't get to Texas.
13 If you want to self-report, then it's on your tab. You're
14 going to have to get there, or you can get a free ride today
15 and start your sentence. But I am not going to hear
16 Mr. Sharon come back to me and say, oh, she can't get to
17 Texas.

18 MR. SHARON: I won't do that, Your Honor.

19 THE DEFENDANT: Self-report.

20 THE COURT: All right.

21 MR. SHARON: Thank you, Judge.

22 THE COURT: Now, I don't -- with due respect to you,
23 Mr. Clark, I don't think the provisions of that detention
24 apply to -- a delay in sentence is done all the time. And I
25 don't think that those are the correct provisions to apply

1 here. I don't think I have to find exceptional circumstances,
2 and I -- I will release her.

3 Today is the 13th. I will give her 60 days to report.
4 The defendant shall report to the institution designated by
5 the Bureau of Prisons by 2:00 p.m. on Friday, August 15, 2014.

6 Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is there anything further from the
9 defendant?

10 MR. SHARON: Nothing, Your Honor. Thank you.

11 THE COURT: I just have a final word to the people
12 in the community. I hope that this sentence hearing today and
13 all this very tough process for both the Swan supporters and
14 for the people who did not support Ms. Swan, gives you a sense
15 of closure and that the town of Chelsea moves on and becomes
16 the town that you all want it to be.

17 Court will stand in recess.

18 (Proceedings concluded at 4:56 p.m.)
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CERTIFICATION

I do certify that the foregoing is a correct transcript,
to the best of my skill and ability, from the electronic sound
recording of the proceedings in the above-entitled matter.

/s/ Melissa L. Merenberg
Melissa L. Merenberg, RPR
Official Court Reporter

11/14/14
Date